145-349

RECORD, CASES Nos. 14,814 & 14,890.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 1340.

THE PEWABIC MINING COMPANY, APPELLANT,

vs.

THOMAS H. MASON, WILLIAM HART SMITH, AND SULLIVAN BALLOU.

FILED AUGUST 21, 1891.

TERM No., 1416.

ALFRÉD A. MARCUS, APPELLANT,

vs.

THOMAS H. MASON, WILLIAM HART SMITH, AND SULLIVAN BALLOU.

FILED OCTOBER 12, 1891.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

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a UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, Henry Billings, Henry T. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.
} Return. Two Appeals.

The appeal of the defendant The Pewabic Mining Company from the order confirming the sale of the defendant-', appellants', property & confirming the master's report of said sale, said order being of March 2, 1891.

The appeal of the same defendant from the order of April 27, 1891, overruling motion to open biddings & for resale of property.

Two appeals.

1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the western district of Michigan, Greeting:

Whereas lately in the circuit court of the United States for the western district of Michigan, before you or some of you, in a cause between Thomas H. Mason, William Hart Smith, and Sullivan Ballou, complainants, and The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, defendants, wherein the decree of the said circuit court entered in said cause is in the following words, viz:

"At a session of said court held in the — circuit on the 4th day of May, A. D. 1886.

Present: The Honorable Stanley Matthews, associate justice of the Supreme Court of the United States, holding the circuit court.

This cause coming on for argument on the pleadings and proofs, after hearing Don M. Dickinson and Alfred Russell, of counsel for the complainants, and C. B. Grant and Benton Hanchett, of counsel for the defendants, and after due consideration, it is ordered, adjudged, and decreed that the equity of the cause is with the complainants; that the affairs of the Pewabic Mining Company be, and they are hereby, decreed to be wound up.

2 That all the assets and property of the said Pewabic Mining Company be sold at public vendue, for cash, to the highest bidder: Provided, however, that if at such sale the bid for the ag-

gregate of the property and assets of said company should not be in excess of fifty thousand dollars above the amount of the debts of said company existing at the time of the sale hereinafter decreed, then that the arrangement for the sale *fo* the property of said company made at the stockholders' meeting in Boston on the 26th day of March, A. D. 1884, and as set up in the defendants' answer, shall be carried out under the direction of the special master hereinafter designated, as provided by the resolution adopted by the stockholders of said company at said meeting, and that in such case said master, from the fund to be furnished by the defendants, shall first pay the debts of said Pewabic Mining Company, and, second, shall pay their *pro rata* to such stockholders who shall elect to take their share in cash of fifty thousand dollars: Provided that such stockholders shall make such election and present their stock for cancellation within sixty days from the date of holding the public sale; and provided further that said special master shall, in case said stockholders' arrangements of March 26, 1884, shall be carried out as herein provided, execute all necessary formal conveyances necessary to carry out said arrangements on payment into his hands by defendants of sufficient money to pay said debts and the *pro rata* to all stockholders as aforesaid, or on payment by them of all the debts and of such stock as shall be presented for cancellation and payment as aforesaid within sixty days with funds
3 furnished by defendants as aforesaid.

It is further ordered, adjudged, and decreed that this cause be, and is hereby, referred to Peter White, as special master, for the following purpose and with the following powers, to wit: That said master proceed to ascert-in the assets and property and the amount of the debts of the said Pewabic Mining Company, and that to this end he may consider the evidence already taken in the cause, a-d may further, upon notice to the solicitors of the respective parties, set days for hearings for those purposes, and either party may produce witnesses as in the ordinary course of a master's proceedings, and that he report to this court his proceedings a-d findings thereon.

That for the purposes hereinabove specified said master is hereby invested with the power and authority to take and examine all the books of the said company and to freely examine all its assets, both real and personal; to enter into and upon the mine and all other property and assets of said Pewabic Mining Company at any and all times as he may desire, and to do those things which in his judgment may be necessary and proper to put all of said pro-erty in the condition and situation to sell to the best advantage.

And it is expressly provided that any proposed purchaser or proposed bidder shall be permitted to enter freely into and upon said mine and all other property and to fully inspect the same and said assets.

And after ascertaining the assets and the debts of said company and making a report thereof to this court, as hereinabove pro-
4 vided, said master shall proceed to sell said property at public vendue, to the highest bidder, in one body, after giving the notices of said sale required by law a-d the practice of this court,

and that he make report thereof, a-d that said property be offered for sale at the front door of the court-house, in the village of Houghton, in the county of Houghton and State of Michigan.

It is further ordered, adjudged, and decreed that if the highest bid for said property at such sale shall amount to more than fifty thousand dollars over and above the indebtedness of said Pewabic Mining Company, as hereinabove provided, then that the arrangements for the sale of said property made at said meeting of the stockholders of said company in Boston be set aside and be held to be null and void, and that the said Pewabic Mining Company and the other defendants in this cause other than the Pewabic Copper Company be, and they are hereby, perpetually enjoined from selling or disposing of the assets and property of said Pewabic Mining Company to said defendants, The Pewabic Copper Company, or any other person, and that the said Pewabic Copper Company be perpetually enjoined from receiving any such conveyance or transfer, and that any transfer made by the said Pewabic Mining Company to said Pewabic Copper Company be, and the same is hereby, declared to be void.

It is further ordered, adjudged, and decreed that the defendants Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, and Daniel L. Demmon, directors of said Pewabic Mining Company, are not liable to pay to complainants and other
5 stockholders any money received by them since the expiration of the charter of said Pewabic Mining Company, April 4, 1883, either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter, and that an accounting by the said defendant directors be, and the same is hereby, denied as to such expenditures made by them after the expiration of the charter.

It is further ordered, adjudged, and decreed that the said master, in case of the sale as hereinbefore provided, is invested with full power to make all necessary formal transfers and conveyances.

It is further ordered, adjudged, and decreed that the proceeds of sales in liquidation of the affairs of said Pewabic Mining Company, in case of sale as above provided, be applied to the payment of the debts of the said Pewabic Mining Company, and the surplus thereafter be distributed *pro rata* among the stockholders of said Pewabic Mining Company.

It is further ordered, adjudged, and decreed that the complainants recover their costs, to be taxed as against the defendants The Pewabic Copper Company and the Pewabic Mining Company, and that the other defendants recover their costs, to be taxed against said complainants, all said costs to be first paid out of the fund realized at the sale, or in the alternative case hereinbefore provided, then out of the fund before the *the* payment of the *pro rata* to any stockholder"—

6 As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the said com-

plainants, and also an appeal taken by the said defendants, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and eighty-nine, the said cause came on to be heard before the said Supreme Court on the said transcript of record on appeal and cross-appeal and was argued by counsel:

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit — in this cause, so far as the same adjudges that the defendant directors of the Pewabic Mining Company are not liable to pay to complainants and other stockholders any money received by them since the expiration of the charter of the Pewabic Mining Company, April 4, 1883, either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter, and so far as the same denies an accounting by the said defendant directors as to such expenditures made by them after the expiration of the charter, be, and the same is hereby, reversed. In all other respects the decree is affirmed, the costs in this court to be paid by the defendants in the court below, and that the said complainants, Thomas H. Mason *et al.*, recover against the said defendants one thousand one hundred and thirty dollars and twenty-five cents for their costs herein expended and have execution therefor.

7 And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with directions to enforce its decree as to the sale of the property, to appoint a master to take an accounting and to inquire and report as to the action of the directors after the expiration of the charter and to take such further proceedings as shall not be inconsistent with the opinion of this court.

JANUARY 13, 1890.

You therefore are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeals notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court, the sixth day of February, in the year of our Lord one thousand eight hundred and ninety.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Costs of Complainants.

Clerk	$367 50
½ cost of printing record	762 75
	$1,130 25

Endorsed: 46. Supreme Court of the United States. Nos. 168 & 246. October term, 1889. Mason *et al. vs* The Pewabic Mining Co. *et al.* & The Pewabic Mining Co. *et al. vs.* Mason *et al.* Mandate. The circuit court of the United States for the western district of Michigan, northern division. Filed March 14, 1890. C. L. Fitch, clerk.

8 Supreme Court of the United States, October Term, 1889.

Costs of Thomas H. Mason et al. in No. 168.

1886.—Docketing cause and filing record, $5.00; Oct. term, appearance, .25; filing præcipe, .25; filing papers, .25; cont., .25	$6 00
18-7, Oct. term.—Transfer, $1.0-; filing papers, .25; continuance, .25	1 50
1888, Oct. term.—Transfer, $1.00; filing papers, .50; continuance, .25	1 75
1889, Oct. term.—Transfer, $1.00; appearance, .25; filing præcipe and receipts, $1.00; filing papers, $2.50; filing briefs, $5.00; argument, .20; judgement, $1.00; filing same, .25; recording proceedings, .40; mandate, $5.00; ½ charge preparing record for printer, &c., $341.25; costs and copy, .40; ½ costs of printing record, $762.75	1,121 00
	$1,130 25

Fee Book A C, page 68.

Test: JAMES H. McKENNEY,
C. S. C. U. S.

9 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, W. HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, DANIEL L. DEMMON, *et al.*, Defendants.

At a session of said court held at the United States court-rooms, in the city of Marquette, in said division of said district, on the eighth day of April, 1890.

Present: Hon. H. F. Severens, district judge.

In this cause, on reading and filing a consent in *uniting*, signed by Chandler, Grant and Gray, solicitors for the above-named defendants, and on motion of Stone & Gray, it is ordered that the said Stone & Gray be, and are hereby, substituted in the place and stead of Chandler, Grant & Gray as solicitors for said defendants.

STONE & GRAY,
Solicitors for Defendants.

(Endorsed:) U. S. circuit court, west. dist. Mich., northern division. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Company *et al.* Order for substitution. Filed and entered April 8th, 1890. F. M. Moore, deputy clerk.

10 At a session of the circuit court of the United States for the western district of Michigan, northern division, sitting in equity, held at the court-room, in the city of Marquette, on Tuesday, the sixth day of May, in the year of our Lord one thousand eight hundred and ninety.

Present: The Honorable Henry F. Severens, district judge.

In the cause between—

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,

v.

THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, THOMAS H. PERKINS, ALDEN B. BUTTERICK, DANIEL L. DEMMON, and The Pewabic Copper Company, Defendants.

On reading and filing the mandate of the Supreme Court of the United States, dated the 6th day of February, in the year of our Lord one thousand eight hundred and ninety, issued after hearing in said court on the transcript of record in this cause on appeal and cross-appeal, by which mandate it appears that the said Supreme Court has ordered, adjudged, and decreed as follows, to wit:

"That the decree of the said circuit court in this cause, so far as the same adjudges that the defendant directors of the Pewabic Mining Company are not liable to pay the complainants and other stockholders any money received by them since the expiration of the charter of the Pewabic Mining Company, April 4, 1883,

11 either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter, and so far as the same denies an accounting by the said defendant directors as to such expenditures made by them after the expiration of the charter be, and the same is hereby, reversed. In all other respects the decree is affirmed, the costs in this court to be paid by the defendants in the court below, and that the said complainants, Thomas H. Mason and others, recover against the said defendants one thousand one hundred and thirty dollars and twenty-five cents for their costs herein expended and have execution therefor; and it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with directions to enforce its decree as to the sale of the property, to appoint a master to take an accounting and to enquire and report as to the action of the directors after the expiration of the charter, and to take such further proceedings as shall not be inconsistent with the opinion of this court. You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice and the

laws of the United States ought to be had, the said appeals notwithstanding;"

And, on motion of Don M. Dickinson and Alfred Russell, of counsel for the complainants, after notice to the counsel for the defendants, who have been duly heard, and upon mature consideration of the opinion, mandate, and decree of the said Supreme Court—

It is ordered, adjudged, and decreed as follows, to wit:

1. That the equity of the cause is with the complainants, and that the affairs of the Pewabic Mining Company be, and they are hereby, decreed to be wound up.

2. That all the assets and property of the said Pewabic Mining Company be sold at public vendue, for cash, to the highest bidder: Provided, however, that if at such sale the bid for the aggregate of the property and assets of said company should not be in excess of fifty thousand dollars above the amount of the debts of said company existing at the time of the sale hereinafter decreed, then
12 that the arrangement for the sale of the property of said company made at the stockholders' meeting in Boston, on the 26th day of March, A. D. 1884, and as set up in defendants' answer shall be carried out under the direction of the special master hereinafter designated, as provided by the resolution adopted by the stockholders of said company at said meeting, and that in such case said master, from the fund to be furnished by the defendants, shall first pay the debts of said Pewabic Mining Company, and, second, shall pay their *pro rata* to such stockholders who shall elect to take their share in cash of fifty thousand dollars: Provided that such stockholders shall make such election and present their stock for cancellation within 60 days from the date of holding the public sale; and provided further that said special master shall, in said *said* stockholders' arrangements of March 26th, 1884, shall be carried out as herein provided, execute all necessary formal conveyances necessary to carry out said arrangements on payment into his hands by defendants of sufficient money to pay said debts and the *pro rata* to all stockholders aforesaid, or on payment by them of all the debts and of such stock as shall be presented for cancellation and payment as aforesaid within 60 days with funds furnished by defendants as aforesaid.

3. It is further ordered, adjudged, and decreed that this cause be, and is hereby, referred to Peter White, as special master, for the purposes of the sale hereinbefore ordered and with the powers hereinafter stated; that said master proceed to ascertain the assets and property and the amount of the debts of the said Pewabic Mining Company, and that to this end he may consider the evidence already taken in the cause, and may further, upon notice to the solicitors of the respective parties, set days for hearing for those purposes, and either party may produce witnesses as in the ordinary course of a master's proceedings, he to report to this court his proceedings and findings thereon.

That said master is hereby invested with the power and authority to take and examine all the books of the said company and to freely

examine all its assets, both real and personal; to enter into
13 and upon the mine and all other property and assets of said Pewabic Mining Company at any and all times as he may desire, and to do those things which in his judgment may be necessary and proper to put all the said property in the condition and situation to sell to the best advantage.

And it is expressly provided that any proposed purchaser or proposed bidder shall be permitted to enter freely into and upon said mine and all other property and to fully inspect the same and said assets.

That, after ascertaining the assets and debts of said company and making a report thereof to this court, as hereinabove provided, and the confirmation thereof, said master shall proceed to sell said property at public vendue, to the highest bidder, in one body, after giving the notices of said sale required by law and the practice of this court, and that he make report thereof, and that said property be offered for sale at the front door of the court-house, in the village of Houghton, in the county of Houghton and State of Michigan.

4. It is further ordered, adjudged, and decreed that the said master, in case of the sale as hereinbefore provided, is invested with full power to make all necessary formal transfers and conveyances.

5. It is further ordered, adjudged, and decreed that the proceeds of sale in liquidation of the affairs of said Pewabic Mining Company, in case of sale as above provided, be applied to the payment of the debts of the said Pewabic Mining Company, and the surplus thereafter be distributed *pro-rata* among the stockholders of said Pewabic Mining Company.

6. It is further ordered, adjudged, and decreed that if the highest bid for said property at such sale shall amount to more than fifty thousand dollars over and above the indebtedness of the Pewabic Mining Company, as hereinbefore provided, then that the arrangement for the sale of said property made at said meeting of the stockholders of said company in Boston be set aside and held to be null and void, and that the said Pewabic Mining Company and the other defendants in this cause other than the Pewabic Copper
14 Company be, and they are hereby, perpetually enjoined from selling or disposing of the property and assets of the said Pewabic Mining Company to said defendants, The Pewabic Copper Company, or any other person, and that the said Pewabic Copper Company be perpetually enjoined from receiving any such conveyance or transfer, and that any transfer made by the said Pewabic Mining Company to said Pewabic Copper Company be, and the same is hereby, declared to be void.

7. It is further ordered, adjudged, and decreed that the defendants Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, and Daniel L. Demmon, directors of said Pewabic Mining Company, are liable to account to complainants and other stockholders for any money received by them since the expiration of the charter of said Pewabic Mining Company, April 4th, 1883, either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expira-

tion of said charter, and that an accounting by the said defendant directors be, and the same is hereby, directed as to such receipt- and expenditures made by them after the expiration of the charter.

8. It is further ordered, adjudged, and decreed that the said special master be, and he is hereby, appointed to take the accounting hereinbefore ordered touching the matters set forth in paragraph 7 of this decree, and that he do forthwith proceed to take such accounting and inquire and report as to the action of the directors after the expiration of the charter and what money has been received by them or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of the charter and in respect to all receipts and expenditures of every name and nature made by them after the expiration of the charter.

That for the better taking of the said accounts the said defendant directors are required to produce before said master all books, entries, papers, vouchers, bills payable and receivable, ledgers, blotters, journals, books of account, and the like, and are further required to be examined before said master upon oath, either upon interrogatories or *viva voce* or by each of said modes, as the said master may direct, and at such time and place as he may direct, and that when said master shall make his report touching the accounting he shall report all the facts and testimony upon which he shall base his findings, and shall state an account as between said directors and the complainants and other stockholders, and show and report what sum may be due from the directors to the stockholders.

9. And it is further ordered that all equities and further directions, including any claim of the said directors for an excess of a proper expenditure over receipts and their remedy therefor, if such excess shall be found, and the question of their costs are reserved until the coming in of the report, and that such sum as shall finally be found due upon confirmation or modification of the report shall be distributed *pro rata* among the stockholders of said Pewabic Mining Company after the payments of the debts of the said company, if they remain unpaid.

10. It is further ordered, adjudged, and decreed that an execution do issue from this court for the costs upon said appeal in favor of the complainants and against the defendants, to wit, for the sum of one thousand one hundred and thirty dollars and twenty-five cents, and also for the costs of the complainants in this court, — be taxed against the defendants The Pewabic Mining Company and The Pewabic Copper Company.

11. And it is further ordered that all the parties to this suit are at liberty to apply to the court upon the footing of this decree as occasion may require.

(Endorsed:) Approved for entry. H. F. Sever-ns, judge. Filed May 6th, 1890. F. M. Moore, deputy clerk.

16 UNITED STATES OF AMERICA:

In the Circuit Court *for* the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,

vs.

THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

To the honorable judges of said court:

Your petitioner, The Pewabic Mining Company, respectfully represents and shows unto the court:

1. That your petitioner is one of the above-named defendants and the corporation whose affairs are directed by the decree in this cause to be wound up.

2. That on the 6th day of May, 1890, this court, in obedience to the mandate of the Supreme Court of the United States, entered a decretal order in this cause for the winding up of the affairs of your petitioner and referring the case to the Hon. Peter White, of Marquette, Mich., as special master, with certain directions and instructions in said order contained. Among other directions in said order is one to the effect that the special master shall "proceed to ascertain the assets and property and the amount of the debts of the said Pewabic Mining Company," and "that after ascertaining the assets and debts of said company and making a report thereof to this court, as hereinabove provided, and the confirmation thereof, said master shall proceed to sell said property at public vendue, to
17 the highest bidder, in one body, after giving the notices of said sale required by law and the practice of this court," &c.

For greater certainty reference is hereby made to said decretal order.

3. That on the first day of July, 1890, the special master caused a notice to be served on Stone & Gray, the solicitors for the defendants in said cause, a copy of which notice is hereto annexed as Exhibit "A" and is made a part of this petition.

That no prior notice or proceeding of any kind had previously been taken or had under said order, and none of the defendants had been heard or had been given an opportunity to be heard as to the terms and requirements or the immediate objects and purposes of said notice.

4. That by consent of the parties the hearing of said notice was continued until the 22nd day of July, 1890, at which time your petitioner appeared before the special master and presented to and filed with him an application, a copy of which is hereto annexed as Exhibit "B;" that the granting of the orders prayed in said application was approved by the Hon. Thomas B. Dunstan on behalf of the complainants, and he then and there argued and insisted that it was not necessary to bring the creditors of your petitioner in before the master by any published or other notice, and that it was

not necessary, in order to comply with the decree and order of the court in this cause, to ascertain the debts of the corporation, either accurately or conclusively, before making a sale of the property of the corporation, and then and there the method and course to be pursued by the master in ascertaining the assets and debts became a matter of dispute between the parties, and the matter of granting the requests contained in the application of your petitioner was argued and submitted to the special master.

5. That after taking said application under advisement during the noon recess the special master announced that he had decided to overrule the application of your petitioner, but that he would adjourn the hearing until Saturday, the 26th inst., at 10 o'clock a. m., so as to enable your petitioner to make an application to the
18 court, now in session at Marquette, for further directions in the matter, to the end that if he was in error he might be set right by the court.

Prayer.

Your petitioner prays the court to order and direct the special master to bring the creditors before him by an advertized notice of at least forty days, and to finally and conclusively, after the giving of said notice, ascertain and determine the actual debts of your petitioner, and that he proceed to ascertain the assets and property of your petitioner and to state the amounts with the directors of the corporation under the decree by first requiring the corporation to file an inventory of its property and assets and by requiring the said directors to file an account in the form of debtor and creditor of their receipts and disbursements after the expiration of said charter, in accordance with the rules of practice of this court.

Your petitioner prays for such further directions as to the court may seem meet.

THE PEWABIC MINING COMPANY,
By F. A. BAKER, *Its Solicitor.*

WESTERN DISTRICT OF MICHIGAN, *ss:*

Or this 23rd day of July, 1890, before me, the clerk of said court, personally appeared Fred. A. Baker and made oath that he has read and knows the contents of the above and foregoing petition by him subscribed as the solicitor of the Pewabic Mining Company, and that the same is true of his own knowledge.

FRANCIS M. MOORE,
Deputy Clerk of the Circuit Court of the U. S. for the Western District of Mich., North. Div.

19 "A."

The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

In the cause between—

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

To Messrs. Stone & Gray, solicitors for defendants:

You will please take notice that I have fixed the fifteenth (15th) day of July, A. D. 1890, at the hour of 10 a. m., as the time, and the Douglass house, in the village of Houghton, Houghton county, Michigan, as the place, for special master's first hearing, provided by the decree, for all the purposes named in said decree for hearing, and that the defendants are required to produce at said hearing before me "all books, entries, papers, vouchers, bills payable and receivable, ledgers, blotters, journals, books of account, and the like," and that Daniel L. Demmon is required to be present, then and there to be examined before me under oath, *viva voce*, and that either party may produce witnesses at said hearing for the purpose of fixing the amount of the debts of the Pewabic Mining Company.

Dated Marquette, Mich., July 1st, 1890.

PETER WHITE,
Special Master.

20 "B."

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

In response to the notice of the special master, dated July 1, 1890, the defendant The Pewabic Mining Company, by F. A. Baker, its solicitor, appears before the special master on the 22nd day of July, 1890, and submits itself to his orders and directions in the matter of the reference now pending before him. Upon this the first hearing before the special master this defendant requests him to make the following directions and orders—that is to say:

1. An order requiring all the creditors of the Pewabic Mining

Co. to file their claims before the special master within forty days after the first publication of notice of such order in a newspaper published in Houghton county, Mich.; said order to be also published in a newspaper published in the city of Detroit, Mich., and a newspaper published in the city of Boston, Mass., the publication in each of said three papers to be once a week for three weeks successively.

2. An order allowing and requiring the Pewabic Mining Company within forty days from this date to present and file with the special master a list or schedule of all of the creditors of the corporation and the amount of their claims respectively and *in* inventory of all the assets and property of the corporation and the situ-
21 ation and estimated value thereof.

3. An order requiring the defendants Daniel L. Demmon, Thomas H. Perkins, and Johnson Vivian (the surviving directors of the Pewabic Mining Company) and the executors or administrators of Henry Billings and *La*den B. Butterick, deceased, directors of said corporation, within thirty days after personal notice of such order to present and file with the special master a full and correct account of any and all the money received or expended by them or either of them since the expiration of the charter of the Pewabic Mining Company, April 4, 1883, either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter, and that they bring in their said accounts in the form of debtor and creditor, according to the rules and practice of the court. In regard to the records, books, and papers of this defendant, it respectfully submits that the order for their production contained in said notice of July 1, 1890, was prematurely granted.

It shows that its principal records, books, and papers are at the office of D. L. Demmon, the secretary and treasurer of the company, at the city of Boston, Mass.; that said Demmon resides at Boston and is an active business man there, and is not able to be absent from Boston for any considerable length of time; that it is necessary to retain the records, books, and papers of the company at the office of the secretary and treasurer, in Boston, until the lists, schedules, inventories, and accounts necessary to accomplish the objects and purposes of the order of reference in this cause have been properly made out, prepared, and verified.

This defendant requests the special master to permit it to retain said records, books, and papers in Boston for that purpose, and that upon filing such lists, schedules, inventories, and accounts, and not until then, the said records, books, and papers be produced and filed with the special master for examination by — or by any of the interested parties.

This defendant submits the matter of the preparation and filing of said lists, schedules, inventories, and accounts and the
22 time and place for the production of the records, books, and papers of the company to the direction and judgment of the special master, and offers to promptly comply with any orders or

directions that he may make in that regard, reserving all its rights to objection or exception thereto.

F. A. BAKER,
Solicitor for the Defendant The Pewabic Mining Company.

(Endorsed:) Circuit court U. S., west. dist. Mich. Thomas H. Mason *et al. vs.* The Pewabic Mining Company *et al.* Petition for further directions. Filed July 23d, 1890. F. M. Moore, dep. clerk. F. A. Baker, solicitor for def't Pewabic Mining Company.

23 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

At a session of said court continued and held at the court-room, in Marquette, on the 23rd day of July, A. D. 1890.

Present: Hon. Henry F. Severens, Hon. Geo. R. Sage, judges.

The petition of the defendant The Pewabic Mining Company praying that the court give to Peter White, the special master in this cause, certain directions therein—said petition being this day filed—came on to be heard and was *signed* by counsel and considered by the court.

Whereupon it was by the court now here ordered that the special master, Peter White, be, and is hereby, directed, for the purpose of better ascertaining the debts of said Pewabic Mining Company and the creditors thereof, to make an order fixing and appointing a day on or before which the creditors of said Pewabic Mining Company may and shall present to and file with said master a statement of their several and respective claims against said Pewabic Mining Company, after which day so appointed and ordered all
24 claims against said Pewabic Mining Company not so presented or filed with said master shall be barred.

Further ordered that the said special master give public notice of the order so made by him, causing the same to be published in a newspaper printed and circulated in Boston, Massachu-setts, a newspaper printed and circulated in Detroit, Michigan, and a newspaper printed and circulated in the village of Houghton, Michigan; that said publication be continued in each paper for at least twenty days before the day fixed by said special master in said order.

That in other respects the prayer of petitioner be, and is hereby, denied, and the master proceed with the hearing, now pending, the same as if the order were not made.

(Endorsed:) United States circuit court, west. dist. Mich., north. div. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Company *et al.* Order on petition for directions to special master. Filed and entered July 23, 1890. F. M. Moore, dep. clerk.

25 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

WESTERN DISTRICT OF MICHIGAN, *Northern Division*, } *ss:*

John W. Stone, being duly sworn, deposes and says that he is one of the solicitors for the defendants in the above-entitled cause; that since the commencement of and during the pendency of said cause and after the same was at issue Alden B. Butterick and Henry Billings, two of said defendants, have died—that is to say, the said defendant, Alden B. Butterick, departed this life on the twentieth day of February, A. D. 1886, and the said Henry Billings departed this life on the tenth day of November, A. D. 1887.

J. W. STONE.

Subscribed and sworn to before me this 19th day of August, A. D. 1890.

R. T. LOONEY,
[SEAL.] *Notary Public, Houghton Co., Mich.*

26 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

And now, at this day, to wit, on the twentieth day of August, in the year A. D. 1890, come the said defendants, The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, and The Pewabic Copper Company, by Stone & Gray, their solicitors, and the said defendants Henry Billings and Alden B. Butterick come not; and hereupon, upon filing the affidavit of John W. Stone, one of the solicitors for the defendants herein, the said defendants, The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, and The Pewabic Copper Company, give

the court here to understand and be informed that since the commencement of and during the pendency of this cause and after the same was at issue and before this day, to wit, on the twentieth day of February, A. D. 1886, the said defendant Alden B. Butterick, died, and on, to wit, the tenth day of November, A. D. 1887, the said defendant Henry Billings died, and the other said defendants survived them. Therefore, on motion of Stone & Gray, solicitors for said surviving defendants, it is ordered that the deaths of said defendants Alden B. Butterick and Henry Billings be, and the same is hereby, suggested of record in this cause.

STONE & GRAY,
Sol'rs for Defendants.

27 GENTLEMEN: Please to take notice that the foregoing is a true copy of the suggestion and order this day entered in said cause, based upon an affidavit, of which the annexed is a true copy.

Dated August —, 1890.

Yours, etc.,

STONE & GRAY,
Sol'rs for Defendants.

To Mess. Dickinson, Thurber & Stevenson, sol'rs for compl'ts.

(Endorsed:) U. S. circuit court, west. dist. Mich., north. div. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Company *et al.* Suggestion of death of two defendants. Filed August 20, 1890. F. M. Moore, dep. clerk. Stone & Gray, sol'rs for def'ts.

28 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, Henry Billings, Thomas H. Perkins, Alden B Butterick, Daniel L. Dem-on, and The Pewabic Copper Company, Defendants.

Before the Hon. Peter White.

In response to the notice of the special master dated July 1st, 1890, the defendant The Pewabic Mining Company, by F. A. Baker, its solicitor, appears before the special master on this the 22nd day of July, 1890, and submits itself to his orders and directions in the matter of the reference now pending before him.

Upon this the first hearing before the special master this defendant requests him to make the following directions and orders—that is to say:

1. An order requiring all the creditors of the Pewabic Mining Co. to file their claims before the special master within forty days after the first publication of notice of such order in a newspaper published in Houghton county, Michigan; said order to be also pub-

lished in a newspaper published in the city of Detroit, Michigan and a newspaper published in the city of Boston, Mass., the publication in each of said three papers to be once a week for three weeks successively.

2. An order allowing and requiring the Pewabic Mining Company within forty days from this date to present and file with the special master a list or schedule of all of the creditors of the
29 corporation and the amount of their claims respectively, and an inventory of all the assets and property of the corporation and the situation and the estimated value thereof.

3. An order requiring the defendants Daniel L. Demmon, Thomas H. Perkins, and Johnson Vivian (the surviving directors of the Pewabic Mining Co.) and the executors or administrators of Henry Bilings and Alden B. Butterick, deceased directors of said corporation, within thirty days after personal notice of such order, to present to and file with the special master a full and correct account of any and all the money received or expended by them or either of them since the expiration of the charter of the Pewabic Mining Co., April 4, 1883, either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter, and that they bring in their said accounts in the form of debtor and creditor, according to the rules and practice of the court.

In regard to the records, books, and papers of this defendant, it respectfully submits that the order for their production contained in said notice of July 1st, 1890, was prematurely granted.

It shows that its principal records, books, and papers are at the office of D. L. Demmon, the secretary and treasurer of the company, at the city of Boston, Mass.; that said Demmon resides in Boston and is an active business man there and is not able to be absent from Boston for any considerable length of time; that it is necessary to retain the records, books, and papers of the company at the office of the secretary and treasurer, in Boston, until the lists, schedules, inventories, and accounts necessary to accomplish the objects and purposes of the order of reference in this cause have been properly made out, prepared, and verified. This defendant requests the special master to permit it to retain said records, books, and papers in Boston for that purpose, and that upon filing such lists,
30 schedules, inventories, and accounts, and not until then, the said records, books, and papers be produced and filed with the special master for examination by him or by any of the interested parties.

This defendant submits the matter of preparation and filing of said lists, schedules, inventories, and accounts and the time and place for the production of the records, books, and papers of the company to the discretion and judgment of the special master and offers to properly comply with any orders or directions that he may make in that regard, reserving all its rights of objection or exception thereto.

F. A. BAKER,

Solicitor for the Defendant The Pewabic Mining Company.

[Endorsed:] The circuit court of the United States for the western district of Michigan, northern division. In equity. Partial report special master. Filed Aug. 26, 1890. C. L. Fitch, clerk.

31 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, THE PEWABIC COPPER COMPANY, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, and Daniel L. Demmon, Defendants.

Before the Hon. Peter White, special master.

And now comes The Pewabic Mining Company, by F. A. Baker, its solicitor, and objects to the allowance of the claim of Charles A. Barnard, filed before the special master in this cause, on the ground that the assessments on stock referred to in said claim were all legal-y made and were voluntarily paid by the said Charles A. Barnard; also, on the ground that said claim is barred by the statute of limitation. This defendant demands a trial and a hearing on the question of its liability on said claim.

Detroit, Sept. 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

32 To Charles A. Barnard, Boston, Mass.:

You are hereby notified that the above objections and the demand for trial have been filed with the Hon. Peter White, special master in this cause.

Detroit, Sept. 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

(Endorsed:) Before Peter White, special master. *In re* claim of Charles A. Barnard. Objection of Pewabic Mining Company. Filed Sept. 18, 1890. F. M. Moore, dep. clerk. F. A. Baker, sol. for Pewabic Mining Co. Peter White, special master.

33 UNITED STATES OF AMERICA:

The Circuit Court of the United — for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, THE PEWABIC COPPER COMPANY, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, and Daniel L. Demmon, Defendants.

Before the Hon. Peter White, special master.

And now comes The Pewabic Mining Company, by F. A. Baker, its solicitor, and objects to the allowance of the claim of Thomas H. Talbot, filed before the special master in this cause, on the following grounds:

The professional services set forth in said claim were not performed by the said Thomas H. Talbot for The Pewabic Mining Company, but for other parties, and services were all rendered after the charter of The Pewabic Mining Company had expired, and the same were not reasonably worth the amount charged.

This defendant demands a trial and a hearing on the question of its liability on said claim, according to the rules and practice of this court.

Detroit, Sept. 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

34 To Thomas H. Talbot, att'y-at-law, Boston, Mass.:

You are hereby notified that the above objection and the demand for trial have been filed with the Hon. Peter White, special master in this cause.

Detroit, Sept. 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

(Endorsed:) Before Peter White, special master. *In re* claim of Thomas H. Talbot. Objections of Pewabic Mining Co. Filed with me Sept. 2nd, 1890. Peter White, special master. F. A. Baker, sol. for Pewabic Mining Co. Filed Sept. 18, 1890. F. M. Moore, dep. clerk.

35 UNITED STATES OF AMERICA:

In the Circuit Court of the U. S. for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
PEWABIC MINING COMPANY, THE PEWABIC COPPER COMPANY, Thomas H. Perkins, Henry Billings, Alden B. Butterick, Daniel L. Demmon, and Johnson Vivian, Defendants.

Before the Hon. Peter White, special master.

And now comes The Pewabic Mining Company, by F. A. Baker, its solicitor, and objects to the allowance of the claim of Daniel L. Demmon, filed before the special master in this cause, on the ground that the services performed by Daniel L. Demmon as secretary and treasurer of the Pewabic Mining Company were performed after the charter of said company had expired, and the same shall be taken into consideration in the accounting to be had between the stockholders of the said company and the said Daniel L. Demmon and the other directors and officers of said company. Said claim is also objected to on the ground that the services rendered were not reasonably worth the sum of twenty-five hundred dollars ($2,500.00) a year. This defendant demands a trial and a hearing as to said claim, according to the rules and practice of this court.

Detroit, Sept. 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

36 To Daniel L. Demmon, 19 Congress St., Boston, Mass.:

You are hereby notified that the above objections and the demand for a trial have been filed with the Hon. Peter White, special master in this cause.

Detroit, Sept. 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

[Endorsed:] Before Peter White, special master. *In re* claim of Daniel L. Demmon. Objection of Pewabic Mining Company. F. A. Baker, sol'r for Pewabic Mining Co. Filed with me Sept. 2, 1890. Peter White, special master. Filed Sept. 18, 1890. F. M. Moore, dep. clerk.

37 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, THE PEWABIC COPPER COMPANY, Thomas H. Perkins, Henry Billings, Alden B. Butterick, Daniel L. Demmon, and Johnson Vivian, Defendants.

Before the Hon. Peter White, special master.

And now comes The Pewabic Mining Company, by F. A. Baker, its solicitor, and objects to the allowance of the claim of the Franklin Mining Company on the ground that said promissory notes aggregating thirty thousand dollars ($30,000.00) were issued by Daniel L. Demmon, the secretary and treasurer of the company, after the charter of the company had expired, and it does not appear that said promissory notes or the proceeds thereof were used for any purpose connected with the business or affairs of the Pewabic Mining Company.

This defendant demands a hearing and a trial on the question of its liability on said promissory notes, in accordance with the rules and practice of this court.

Detroit, Mich., September 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

38 To the Franklin Mining Company, 19 Congress St., Boston, Mass.:

You are hereby notified that the above objections and the demand for a trial have been filed with the Hon. Peter White, special master in this cause.

Detroit, Sept. 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

(Endorsed:) Before Peter White, special master. *In re* claim Franklin Mining Co. Objections of Pewabic Mining Co. Filed with me Sept. 2, 1890. Peter White, special master. Filed Sept. 18, 1890. F. M. Moore, dep. clerk. F. A. Baker, sol. for Pewabic Mining Co.

39 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, THE PEWABIC COPPER COMPANY, Thomas H. Perkins, Henry Billings, Alden B. Butterick, Daniel L. Demmon, and Johnson Vivian, Defendants.

Before the Hon. Peter White, special master.

And now comes The Pewabic Mining Company, by F. A. Baker, its solicitor, and objects to the allowance of the claim of Henry J. Stevens, filed before the special master in this cause, on the ground that the said Henry J. Stevens never performed any professional services for said company; that the services alleged to have been performed were performed after the charter of the company had expired, and that the same were not reasonably worth the sum of three thousand dollars ($3,000). This defendant demands a hearing and a trial as to its liability on said claim.

Detroit, September 1st, 1890. F. A. BAKER,
Sol'r for Pewabic Mining Company.

40 To Henry J. Stevens, att'y-at-law, Boston, Mass.:

You are hereby notified that the above objections and the demand for a trial have been filed with the Hon. Peter White, special master in this cause.

Detroit, September 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

(Endorsed:) Before Peter White, special master. *In re* claim of Henry J. Stevens. Objections of Pewabic Mining Co. Filed with me Sept. 2, 1890. Peter White, special master. Filed Sept. 18, 1890. F. M. Moore, dep. clerk. F. A. Baker, sol'r for Pewabic Mining Company.

41 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, THE PEWABIC COPPER COMPANY, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, and Daniel L. Demmon, Defendants.

Before the Hon. Peter White, special master.

And now comes The Pewabic Mining Company, by F. A. Baker,

its solicitor, and admits that the claims of Joseph H. Vivian for $1,650, of John Vivian for $8,483.44, of Arno Jaehnig for $350.00, of Eldred Noble for $699, and other claims, filed as sundry accounts, aggregating $10,728.76, are all correct and proper accounts, and the amounts charged are correct, but this defendant shows and it has been conceded by each of said claimants that said accounts have been paid out of the proceeds of property and assets belonging to the Pewabic Mining Company, and that said accounts should only be considered in the accounting to be had with the officers and directors of said company in this cause. This defendant makes no objections to the allowance of said claims for the purposes of said accounting, but does object to the allowance of the same for the purposes of the distribution to be had in this cause. This defendant further shows that on said accounting it will appear that the officers and directors of the Pewabic Mining Company are
42 indebted to said company, among other things, for the proceeds of property constituting a part of the assets of the Pewabic Mining Company at the expiration of its charter, April 1, 1883, and also for the proceeds of property constituting a part of the assets of the company at the time it ceased to do business, on the first day of July, 1884. This defendant submits that property so owned by it or the proceeds thereof or the chose in action now existing against the directors and officers of the company therefor should be fully ascertained and determined before any sale should be made under the decree in this cause.

This defendant demands a hearing upon these questions, according to the rules and practice of this court.

Detroit, September 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

To Dickinson, Thurber & Hosmer, sol'rs for above-named complainants:

You will please take notice that the above and foregoing objections and statements have been filed with Hon. Peter White, special master in this cause, on this the first day of September, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

(Endorsed:) Before Peter White, special master. *In re* claim of John Vivian *et al.* Objections of Pewabic Mining Co. Filed with me Sept. 2, 1890. Peter White, special master. Filed Sept. 18, 1890. F. M. Moore, dep. clerk. F. A. Baker, sol'r for Pewabic Mining Co.

43 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, THE PEWABIC COPPER COMPANY, Henry Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and Johnson Vivian, Defendants.

Before the Hon. Peter White, special master.

And now comes The Pewabic Mining Company, by F. A. Baker, its solicitor, and objects to the allowance of the claim of Thomas H. Perkins, filed before the special master in this cause, on the ground that said Perkins is not entitled to any compensation for acting as president of the company, and services performed by him were performed after the charter of the company had expired, and the amount charged in said claim is more than the services of said Thomas H. Perkins as president were reasonably worth.

This defendant demands a hearing and a trial on the question of its liability on said claim, according to the rules and practice of this court.

Detroit, September 1st, 1890. F. A. BAKER,
Sol'r for Pewabic Mining Company.

44 To Mr. Thomas H. Perkins, Boston, Mass.:

You are hereby notified that the above objections and the demand for a trial have been filed with the Hon. Peter White, special master in this cause.

Detroit, September 1st, 1890.

F. A. BAKER,
Sol'r for Pewabic Mining Company.

(Endorsed:) Before Peter White, special master. *In re* claim of Thomas H. Perkins. Objections of Pewabic Mining Co. Filed Sept. 18, 1890. F. M. Moore, dep. clerk. F. A. Baker, sol'r for Pewabic Mining Co. Filed with me Sept. 2, 1890. Peter White, special master.

45 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Chancery.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

To the court:

I, Peter White, who was by the decree of the court in this cause

appointed special master for two purposes—the one to ascertain the debts and assets of the Pewabic Mining Company, to the end that the property might be sold at public sale by me at a price not less than fifty thousand dollars added to the debts of said company, and the other to take an accounting from the defendants other than said corporations—have the honor to submit my report and findings under the first provision of the decree above referred to, which is as follows:

"3rd. It is further ordered, adjudged, and decreed that this cause be, and is hereby, referred to Peter White, as special master, for the purpose of sale hereinbefore ordered and with the powers hereinafter stated; that said master proceed to ascertain the assets and property and the amounts of the debts of the said Pewabic Mining Company, and that to this end he may consider the evidence already taken in the cause and may further, upon notice to the solicitors of the respective parties, set days for hearing for these purposes, and either party may produce witnesses as in ordinary course of a mas-
46 ter's proceedings; he to report to this court his proceedings and findings thereon."

"That said master is hereby invested with the power and authority to take and examine all books of said company and to freely examine all its assets, both real and personal; to enter into and upon the mine and all other property and assets of said Pewabic Mining Company at any and all times as he may desire, and to do those things which in -is judgment may be necessary and proper to put all of said property in a condition and situation to sell to the best advantage."

"And it is expressly provided that any purchaser or proposed bidder shall be permitted to enter freely into and upon said mine and all other property and to fully inspect the same and said assets."

"That after ascertaining the assets and the debts of said company and making a report thereof to this court, as hereinabove provided, and the confirmation thereof, said master shall proceed to sell said property at public vendue, to the highest bidder, in one body, after giving the notices of said sale required by law and the practice of this court, and that he make report thereof, and that said property be offered for sale at the front door of the court-house, in the village of Houghton, in the county of Houghton and State of Michigan."

In accordance with said decree I have entered upon the property and, in addition to that duty and others provided by said decree for the purposes of a report on the assets and debts, I did give notice to the solicitors of the respective parties, on or about July 1st, 1890, to attend before me, at Houghton, on July 16th, 1890, and requiring of the defendants the production of the books of the business of said company, the presence of the treasurer of said company, Mr. Daniel L. Demmon. A copy of said notice as so served by me is hereto annexed, marked "A." Then and there both parties appeared by
47 counsel and the paper was filed with me by the defendants' counsel which is attached, marked "B." Therefrom and thereafter said hearing was continued from time to time and day to day, at Houghton and Marquette, and oral examinations had of all

witnesses produced by either side until the twentieth instant, when the counsel for the respective parties announced that their respective sides desired to offer no further testimony.

Hereto attached is a transcript of all the testimony taken and of the papers filed before me except the books of the Pewabic Mining Company, which were offered and received in evidence but withdrawn, as hereinafter detailed.

The counsel who have represented the complainants before me have been Thomas B. Dunstan and Don M. Dickinson, and the defendants have been represented by one or all of the following on the different days of hearing:

Messrs. Stone & Gray, F. A. Baker, and Mr. Ostrander, Johnson Vivian, James Moore, Capt. Thomas Whittle, Charles F. Bailey, Daniel L. Demmon, and Daniel Kloechner.

I am satisfied from my own examinations and knowledge of the property and of the condition *for* the market for mining property that, in the interest of all desiring to realize the largest price for the property and to avoid a sacrifice of all just and material interests involved, it is my duty to expedite the proceedings to a sale and to make this report to the court with all reasonable expedition, and my reasons therefor hereinafter mare fully appear.

48 *The Assets and Their Condition.*

For the purpose of ascertaining the descriptions and their condition I have, as directed by the court, examined the evidence taken, as shown by the printed record of the Supreme Court of the United States; have made personal examinations; have called to my aid expert mining engineers and mining men in making said examinations (whose te-timony is hereto attached), and I have taken the testimony of all men who, to my knowledge, could give information on the subjects involved.

Of the personal property found to be on hand by the report of Special Master Maynard, as described in his report of August 13th, 1884, found at pages 818 to 821 of the printed record aforesaid, there is nothing remaining.

These items are as follows:

Wood and timber	$27,398 59
Mining supplies	30,000 00
Cash on hand	9,197 32
Copper on hand	43,757 66
Bills receivable	1,058 67

This personal property, together with receipts from various sources since said report of Special Master Maynard, like rents of dwellings, of power and machinery, amount paid for right of way by a railroad crossing the property, have all been disposed of by the defendants in charge and are not subject to sale. The questions, if any, to be raised upon the good faith of the disposition of the same and of the proceeds will more properly be considered under the reference to me for an accounting, which has not been considered,

except so far as the actings and doings and accounts of the defendants might shed light upon the indebtedness or the quantity, kinds, description, and whereabouts and conditions of the assets.

The complainants and a majority of the stockholders of the Pewabic Mining Company have expressed to me a wish to
49 avoid anything in the examination or under the reference which might obstruct or delay a sale of the mining property, and my examination of the property and its conditions has convinced me that my duty in the premises required me to facilitate an early sale in the interest of all concerned in realizing well from the sale for reasons hereinafter stated. I have therefore devoted my time in this reference wholly to that examination, which under the decree is made prerequisite to a sale of the property.

The real estate and mine equipment consists of the following:

(1.) The north half and southwest quarter of section twenty-five (25), in town. fifty-five (55) north, of range thirty-four (34) west, and the mining right to mine for copper in the southwest quarter of section twenty-three (23), in the same town. and range.

(2.) The stamp-mill and appurtenances, including tools, pumps, and buildings.

(3.) Dwellings on property for men, mine buildings, shops, and machinery equipment for mining, including dump-cars, pumps, compresser, and *amn* engine, all as described by Special Master Maynard as constituting a "thoroughly equipped copper mine," including the stamp-mill, *is* greatly deteriorated in value and largely out of repair from natural decay, wear and tear, and damage by the elements. To place it in good condition as a working equipment would cost a large amount, which can hardly be estimated, and in my opinion such an expenditure would add little or nothing to the price which the property, sold in a body, would bring, while if sold now, as it stands, treating it as an equipment, it will add more than its separate value in the amount bid for the whole. In detail, or if sold separately, it would be now difficult to appraise it or obtain any considerable price for it. In my opinion, the value of this property, for which I am now assured of bids, if a sale can be speedily had, far in excess of any minimum bid contemplated by the decree, consists in a situation of the mine or mining land lying, as it does, between and contiguous to the
50 Quincy mine (the richest mine on the Pewabic lode and the *trird* in amount of copper production in Michigan) and the Franklin mine, which is the second in amount of copper production on the Pewabic lode. An examination of the evidence heretofore taken with that taken on this hearing shows that the shaft of the Pewabic mine extends to a thirty-fourth level, and that all the workings in all the levels and in the whole mine had substantially exhausted the copper in sight or profitably attainable from those workings; and, further, that the extensive diamond-drill explorations, as shown at page 584 of the said printed record, in connection with the testimony of Res-dent Director Vivian and his mining men and engineers at the Pewabic, had failed to discover profitable copper in any direction from any of the workings or levels within the mine.

As shown by the evidence, therefore, on both sides, there is nothing within the mine at this time—and there have been no workings and no explorations since that evidence was given—to show that it is not entirely exhausted of product of any value whatever. Maps and plats of the inner mine, of the shaft, of every level, drift, stope, and drill hole, are attached to exhibits to said printed evidence and are also in the office of the company at the mine.

But the mine and its workings and the drill-work have entered, developed, or explored but a small fraction, not exceeding, in my opinion, one-tenth of the aera of the new Pewabic property, consisting of 160 acres of mining land situated as aforesaid, between two of the best mines and one of the best copper lodes in the copper district.

In the chance and belief that in this 160 acres, which, so situated, has as yet been untouched by shaft, drift, or drill, there is rich copper ground consists the saleable value of this property; and in the condition it now is, without an attempt to discover copper, in my opinion, it will bring a large price at a public sale if such a sale is had while the present exceptional activity in copper interests and copper lands continues, stimulated as it is by the unprecedented demand for copper in the market and its consequent high prices.

51 The Pewabic mine is now filled with water up to about the twenty-sixth level. Above that point in 1885 the Franklin mine, which is and has been under the same managements as the Pewabic for years, broke through into the Pewabic mine.

If the water should be permitted to rise to this break it would flow into the Franklin. Mr. Vivian, who is the agent of the Franklin in charge as well as the resident and managing director of the Pewabic, has caused the pumping machinery, at the expense of the Pewabic Company, to keep the water down below this opening. At this time I express no opinion as to the propriety of this arrangement and as to this charge upon the Pewabic, but I am satisfied, under the testimony and from my own knowledge of mining and my own examination in the matter, that the water in the mine during its inactivity has been a benefit as a preservative of the timber and in sustaining the walls, and that it would have been in like manner beneficial to the property if it had been entirely filled with water.

It has been suggested in the course of the hearing before me that this water should be pumped out to enable proposing purchasers to examine the workings of the mine. In my opinion, such a course is entirely unnecessary. All the parties concede that the maps and plats show accurately the most remote of the workings to their full extent, and even the drill explorations, and all parties concede that in none of these workings or explorations is there an indication of paying copper, as it is also shown conclusively by the printed record; so that, so far as an examination would have any effect upon the proposed purchaser seeking indications of paying grounds, a view of the inner mine would have an ill rather than a good one. On this subject I call the attention of the court, as to the practice in buying and selling copper properties in like condition and as to the need of provid-

ing for a view of the workings for a proposed purchaser, to the testimony of witnesses Whittle, Moore, Bailey, and Harris, and state that their testimony commends itself to me as in accordance with my own judgment and experience.

52 Furthermore, in answering questions of possible bidders I am compelled to state and shall feel obliged in future to state that there are no indications of copper within the mine. The fact that this property was to be sold has been known to the public interested in such matters through frequent references in the press of this State and of Boston and New York since the announcement of the decision of the Supreme Court in this case and since my official relation to the matter as master was thereby affirmed, and there has at no time been a wish expressed to me nor have I heard of a desire on the part of any one to see the inside of the mine, while inquiries as to the amount of property and situation of the mining land have been frequent.

To relieve the mine entirely of water would cost not less than from fifteen to twenty thousand dollars, and I know of no assets from which such a fund could be properly raised, and there is no money on hand exceeding one hundred dollars.

Furthermore, I feel satisfied from the testimony that, without constant and watchful care as the mine shall be relieved from water in retimbering and repairing, the shafts used for pumping would be dangerous.

The Debts.

The Pewabic Mining Company has at no time been an insolvent concern, and it has at all times kept proper and accurate books of account, both at its Boston office and the mine in Michigan, constantly kept by good book-keepers in both offices, and in these books every financial transaction, receipt, cash and credit business, and liability have been entered up to the present time, if I except such liabilities, if any, as the company has incurred for counsel fees in this litigation or salaries of officers, if any, since the commencement of suit.

53 This suit was commenced March 31st, 1884, and the company's financial condition on January 1st of that year was given in the treasurer's report, found on page 18 of the printed record, as follows:

" Copper on hand, 504,652 lbs. at 14⅞	$75,066 99
" Cash on hand	1,393 35
" Due from assessments (since paid)	14,148 00
" Supplies at mine	53,828 42
	$144,436 78

Contra liabilities:

" Loans	$55,751 02
" Drafts outstanding	23,835 91
" Forfeited stock due, for	1,818 75

"Smelting, Nov. & Dec.	$1,564 74
"Freight	258 48
"Liabilities at mine	21,526 25
	$104,755 15
"Balance assets over debts	$39,681 61"

It will be observed that the assets are of a kind known as "live" or cash assets, omitting all other property in the statement, and it appears by the testimony of the treasurer, Mr. Demmon, that the indebtedness specified in the statement has been discharged with the assets therein named.

I have had before me as a witness the secretary and treasurer, Mr. Demmon, with the books of the Boston office, and the only liabilities or claims of any kind, whether valid, invalid, or contingent, that he knows of now existing or are shown by his books are as follows:

To the Franklin Mining Company for money loaned the Pewabic Mining Company since this litigation commenced	$30,000 00
Interest on same	
Due stockholders	1,855 14
Profit and loss account carried on books for years and origin of which the treasurer does not know	365 00
Total known at Boston office	$32,220 14

54 From the mine books which I have had in my possession and have caused to be examined and by the testimony of the resident director, Vivian, and the book-keeper who has kept them the total indebtedness, outside of the above, that has ever been known or heard of at the mine as now existing is as follows:

First National Bank at Houghton, overdraft	$208 78
Franklin Mining Co., loan	1,745 71
James Howard & Son	90 69
Sundry small items	20 99
Total	$2,066 17

The only addition to these items that is suggested is for counsel fees for defense in this litigation and some indefinite statement of the t-earsurer of a possible liability to him and to the president of the company for salaries as officers since the commencement of this suit.

Mr. Vivian has received payment of a salary charged by himself, but states that he will put in the aggregate of the same as a claim in order to have it judicially allowed and not for the purpose of making any further claim.

An examination of the printed record shows that the defendants claimed that the consideration to be paid for all the assets and

property in the transfer that was enjoined in this case was not only $50,000, but also whatever debts then—at the commencement of the suit—were owing by the Pewabic Company. There was no evidence in the case as to what such alleged debts were or the amount of them, and the decree of this court—in that respect affirmed by the Supreme Court—provided that, at the public sale to be conducted by me, unless the price bid should be equal the said $50,000 added to the debts, the said sale so enjoined should be carried out, and therefore that prior to sale under the decree the amount of such debts should be ascertained in order to fix the lowest bid which could be accepted under the decree.

55 I find that there are no debts now existing which were in existence at the time of the attempted and enjoined sale or at the time of the commencement of this suit, March 31st, 1884.

I find that the total claims against the Pewabic Mining Company of all kinds, whether valid or not, are as follows:

Contracted since Jan 1st, 1885, without interest, $34,286.31.

It is also said by the treasurer that the president of the company and himself and certain attorneys have claims for salaries and services arising since the commencement of this suit, the amount of which the officers and book-keepers of the company have not stated up to the close of the examination. The claims for attorneys, as suggested, appears to be all for services in this suit and, inasmuch as the books show payment of attorneys in this case prior to the decision of the Supreme Court, I am of the opinion and find that there are no such claims, unless there may be for services in this case in the Supreme Court and in these proceedings since the decision.

It is not at all probable that, with all suggested claims for salaries and attorneys, *that*, all told, the alleged and suggested indebtedness of the company would reach $50,000, even if the court should hold that any claim arising since the suit commenced, and especially for any claim for legal services rendered these defendants in this cause, are debts of the company within the meaning of that part of the decree directing me to ascertain them for the purpose of fixing the lowest bid which would be accepted.

I am notified by counsel for complainants that the claim of the Franklin Mining Company for $30,000 and interest and all claims for counsel fees in this suit will be contested and, as such contest is likely to be prolonged and, so far as counsel fees are concerned, might more properly be considered in the reference for an accounting, I have deemed it my duty not to delay my report until the end of such contest. These may be entered upon under the order of the court directing me to advertise for the presentation of the

56 claims before me on or before Aug. 28th, 1890. None have yet been presented, and under that order I assume that I am to report the proceedings with my findings as to who are proper creditors, distributees of the fund to be realized at the sale. I have fully complied with the order referred to as to advertizing.

I beg leave further to report that I have the pledge of a responsible bidder that he will open the bid at not less than $150,000 in behalf of a majority of the stockholders of said Pewabic Mining Com-

pany. Said proposed bidder has placed in my hands the certificate of stock in said Pewabic Mining Company showing a majority of over 1,000 shares of the capital stock of said company, and has pledged his individual responsibility as well as to make such bid. Thus the minimum bid will be far in excess of any possible or suggested claim against the company added to $50,000, thus providing a fund for their certain payment in case their validity shall be finally sustained.

I find that all the equipment has very greatly deteriorated since the commencement of this suit and is being cared for at an expense which is a loss to all interested.

I find that the assets are now in good condition for sale, as they can be placed in the excercise of sound business judgment in pursuing the object of realizing the largest amount of money for distribution; that it is inexpedient and unnecessary to relieve the mine of water for the reasons before stated.

In my opinion, the mining companies owning contiguous property and a combination of stockholders will be the principal competing bidders at the sale, and that all of these are familiar with the property. I am also of the opinion that if the property could now be brought to sale it would be run up by responsible bidders to $500,000 or upwards.

I find that the present is a more auspicious time for a sale of this property at a good price than has been for years; that in-
57 quiries for the day of sale are frequent and interest in the sale very active, and I am satisfied that the sale should take place at the earliest day on which it can be fixed by the court, so that advantage may be taken of the present condition of the market.

I find that the fact that this property is to be sold under the decree in this cause is already widely known among those interested in copper lands, or who are likely to be bidders, in Boston, New York, and Michigan, Boston being the centre in this country of copper investments and financial operations.

I have the honor to recommend, therefore, that the day of sale be fixed, requiring not to exceed a six weeks' advertisement of the sale in Boston, New York, Chicago, and Michigan, and that the court will fix an amount not less than $25,000 or not more than $50,000 as a bidder's deposit, subject to forfeiture on failure to pay the bid in full in case depositor shall finally be the highest bidder and on confirmation of the sale by court; that if a bid of at least $150,000 shall not be received at the sale and the said forfeit money paid in by the bidder that the sale be adjourned to a later day and the matter reported to the court for further directions.

I deem it proper, as it is also in accordance with the request of complainants' counsel, to certify the following facts to the court as part of the proceedings before me.

In accordance with the decree, I required the production of the books of the Boston office and the attendance of Mr. Demmon before me on July 16th, 1890, at the Douglass house, Houghton, in the district. The books were not then produced, nor did Mr. Dem-

mon appear at any adjourned day of the hearing until July 26th, 1890, when Mr. Demmon appeared before me and was examined. He brought with him the trial balance, cash book, ledger, journal, and draft book of the Pewabic Mining Company formerly used at the Boston office. These books were offered, received in evidence by me, and I had secured an expert book-keeper to examine them, in addition to such examination of their contents as was called
58 out on the examination of Mr. Demmon aforesaid. I stated to the witnes Demmon that I should require, also, in addition to the books offered, the transfer book and the stock ledger.

At said hearing Mr. Demmon stated to me that he would like to prepare a statement to file with me and would like the books for that purpose, and that if he could take the books in order to have such statement prepared he would send the statement and return said books, so that they should be received by the 18th of August, and would ship them for that purpose on Saturday, the 16th, from Boston. I was assured by defendants' counsel that I might rely implicitly on Mr. Demmon's assurance in the premises, as I hesitated in the matter of permitting the books so in my hands and evidence to go back to Boston, but on all their assurances I permitted Mr. Demmon to take said books. Nothing has been heard by me from Mr. Demmon or the books or his said statement since that time, but counsel for the defendants has made the statement in regard thereto appearing on pages 132–'3 of the record of proceedings, at Marquette, on August 20, 1890, hereto attached.

It appears by the record that the books in question are not used or needed in the Boston office, and it also appears that the Pewabic Mining Company is a Michigan corporation, having its principal office in Michigan, at the mine in Houghton county, in this district.

From the evidence in this case, including the books of account of the Pewabic Mining Company at the Boston office and at the mine, the indebtedness of the Pewabic Mining Company on the 26th day of March, A. D. 1884, was as follows:

59 *At the Boston Office.*

Due Franklin Mining Company	$9,000 00
" Howard Bank	13,000 00
" "	13,000 00
" "	13,000 00
" Franklin Mining Company	3,000 00
" " "	1,500 00
" " "	5,000 00
" on forfeited stock to sundry parties	1,901 06
" sundry parties on dividends	365 15
Total	$59,766 23

At the Mine in Houghton County.

Due Mesnard Mining Company	9 00
" Pontiac Mining Company	9 00

Due Concord Mining Company	$438 09
" James H. Seager	523 32
" F. H. Rogers	59 22
" Joseph Paull	6,353 59
" J. Hodges	23 41
" Graham Pope	137 65
" Chas. Brumeau	2,897 99
" Andrew Johnson	1,813 87
" Portage Lake Foundry & Machine Works	797 72
" Chas. H. Hodge	27 73
" John Senter	300 00
" P. R. Gottstine	177 86
" Benjamin Weider	16 00
" Ed. Thorndyke	13 00
" E. Ryan	20 86
" J. Wertin & Son	29 40
" W. Bingham & Co.	19 00
" Atlantic Dynamite Co.	700 00
" Quincy Mining Co.	97 03
" Portage Lake Bridge Co.	60
" L. G. Emerson	32 50
" Standard Oil Co.	45 39
" M. C. Bullock	675 00
" taxes due	525 00
" sundry parties for labor	4,680 97
Total	$20,424 97

Total Boston office	$59,766 23	
Total mine office	20,424 97	
Grand total		80,191 20

That on the 24th day of July, 1890, I prepared a notice for publication, requiring all creditors of the said Pewabic Mining Company to present their claims against said company to me, at my office, in the city of Marquette, Michigan, on or before the 28th day of August, 1890, and that such notice was published in the following-named newspapers, to wit: The Detroit Free Press, Mich.;
60 the Portage Lake Gazette, of Houghton, Houghton county, Michigan, and the Boston Post, of Boston, Massachusetts.

That annexed hereto is proofs of publication is said Free Press and said Gazette, which proofs I file herewith and ask to have same made part hereof. I have no proof of publication of the notice above mentioned in the Boston Post, inasmuch as none has been received by me from the office of said Post, and have examined each issue from the 28th day of July down to the 30th day of August, 1890, and personally know that said notice was published therein during that period; that meetings were held by me at various times during the period in which such claims were to be filed by me, and particularly on the twenty-eighth (28th) day of August, 1890, when

the following proceedings were had and the following claims by the parties and in the amounts hereinafter stated were filed, to wit:

1. Thomas H. Talbot, for services as counsel for the Pewabic Mining Co.	$16,400 00
2. Daniel L. Demmon, for services as secretary and treasurer for Pewabic Mining Co.	14,208 33
3. Thomas H. Perkins, services as president of said company	5,000 00
4. Henry J. Stevens, services as solicitor for said company	3,000 00
5. Stone & Gray, services as counsel for said company	65 35
6. Arno Jaehing, services in preparing statement of Pewabic property	75 00
7. Franklin Mining Company, six notes, aggregating	30,000 00
Interest on said notes	10,495 13
8. Charles A. Barnard, assessment on stock from Nov. 22, 1882, to October 31st, 1883	800 00

The above original claims, as presented to and filed with me, are hereto attached and reported to the court herewith.

I further report that after the filing of the above claims with me as special master, F. A. Baker, Esq., as solicitor for the Pewabic Mining Company, appeared before me and objected and filed in writing objections to the following of the above claims, to the legality and sufficiency thereof as against said Pewabic Mining Company, to wit:

61 Thomas H. Talbot	$16,400 00
Daniel L. Demmon	14,208 33
Thomas H. Perkins	5,000 00
Henry J. Stevens	3,000 00
Franklin Mining Company	30,000 00
Charles A. Barnard	800 00

That attached hereto are the written objections of said F. A. Baker, Esq., as such solicitor, to said six claims, and made part of this my report.

On the 11th day of September I received from Stone & Gray, solicitors for the defendants, a written request to fix the time and place when and where I will hear testimony in support of the claims of creditors of the Pewabic Mining Company, and to give them reasonable notice in order that they could produce witnesses before me. I report that I have not yet fixed such time.

In addition to the claims filed with me as above stated, there was also testimony given at several hearings before me of certain other items of indebtedness against the Pewabic Mining Company as follows:

The National Bank of Houghton	$208 78
Franklin Mining Company	1,745 71
Centennial Mining Company	3 34

James H. Seager	$1 95
Quincy Mining Company	3 50
Poll-tax account	1 00
Jas. Howard & Son	90 69
Wm. Harry	90
J. Hodges	10 30
Total	$2,066 17

None of these claims, however, have been presented or filed with me as special master.

I further respectfully report to the court that I have prepared a notice of sale of all the assets and property, real and personal, including mining rights and interests of the Pewabic Mining Company, a copy of which notice is hereto annexed and dated September 12th, 1890, and that I have directed such notice of sale to be published on each Thursday of each week, from and including the 18th inst. to and including the 30th proximo, in the following public newspapers, to wit: The Portage Lake Mining Gazette,
62 of Houghton, Houghton county, Michigan; the Daily Free Press, of Detroit, Michigan; the New York Evening Post, of New York city; the Boston Post, of Boston; the Chicago Times, of Chicago; the Mining Journal, of Marquette, Michigan.

That a copy of such notice of sale was published in the Daily Free Press aforesaid on Saturday, the 13th day of September, instant.

Dated Marquette, Mich., September 18th, 1890.

PETER WHITE,
Special Master.

The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

In the cause between—

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

To Messrs. Stone & Gray, solicitors for defendants:

You will please take notice that I have fixed the fifteenth (15th) day of July, A. D. 1890, at the hour of 10 a. m., as the time, and the Douglass house, in the village of Houghton, Houghton county, Michigan, as the place, for the special master's first hearing provided by the decree, for all the purposes named in said decree for hearing, and that the defendants are required to produce at said hearing before me "all books, entries, papers, vouchers, bills payable and receivable, ledgers, blotters, books of account, and the like," and that

Daniel L. Demmon is required to — present, then and there, to be examined before me under oath, *viva voce*, and that either party may produce witnesses at said hearing for the purpose of fixing the amount of the debts of the Pewabic Mining Company.

Dated Marquette, Mich., July 1, 1890.

(Signed) PETER WHITE,
Special Master.

[Endorsed:] Report of special master. Filed Sept. 18, 1890. F. M. Moore.

63 UNITED STATES OF AMERICA:

Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU, Compl'ts,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

The said defendants, The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, and The Pewabic Copper Company, by their solicitors, come and move the court for an order to strike from the files in this cause and to cancel and annul a certain document, paper, and report filed therein on Sept. 18, 1890, by Peter White, Esq., special master heretofore appointed in said cause, for the following reasons:

First. Because said report is premature.

Second. Because none of the matters referred to special master appear by said report to have been determined by him.

Third. Because said special master has not ascertained and therefore cannot report the indebtedness of the defendant The Pewabic Mining Company.

This motion is based upon the said document or report of said special master upon the record and files in this cause.

STONE & GRAY,
Solicitors for Defenda-ts.
F. A. BAKER,
Sol'r for Def't The Pewabic M'g Co.

Endorsed: U. S., sixth circuit, west. dist. Mich., N. division. Thomas H. Mason *et al. vs.* Pewabic Mining Co. Motion. Filed & entered Oct. 6th, 1890. F. M. Moore, dep. clerk. Stone & Gray, sol'rs for defendants.

64 UNITED STATES OF AMERICA:

Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

The defendants, by their solicitor, come and move the court for further directions concerning the matters in issue and the procedure to be followed by the special master in and about the matters heretofore referred to him, and defendants represent to the court in this behalf that the said special master has advertized the property of the Pewabic Mining Company for sale and has fixed the date of sale, November 6 next.

That said special master has filed a report with the clerk of the court, the date of filing being September 18, 1890, and that a motion has been made to strike said report from the files.

That in the proceedings to ascertain the debts of the Pewabic Mining Company the special master has received and filed a large number of claims of persons who claim to be creditors of said Pewabic Mining Company.

That objections to a considerable number of these claims have been filed on the part of the Pewabic Mining Company, which objections deny a liability on the part of the company to pay the claimants.

That, pursuant to instructions and intimations of the court, the said special master provided by an order and notice for a hearing of the questions arising upon said contested claims and for the taking of such proofs for and against said claims as might be offered, and fixed October 1st instant as the first day or beginning of said hearing.

65 That on the first day of October said hearing was begun and some proofs were taken in support of the contested claims, at which time also some other and further claims were filed with and received by said special master.

That said special master adjourned the said hearing for the purpose aforesaid to the 22nd day of October instant, at Boston, Mass., at which time and place, under the order made by said master, said hearing will be continued.

All of these facts appear on the record, either in the office of the clerk of this court or in the office of said master, from all of which it is submitted to the court that the special master should be directed that the sale by him advertised to take place November 6 next cannot then be made.

That he should be directed that until such time as he is able to report to the court his determination upon the matters referred to

him and until the time that report shall be confirmed by order of this court, according to the rules and practice of the court, no sale of any of the property of the Pewabic Mining Company shall be made.

That said special master may receive such other and further directions as to the court shall seem proper. This motion is based upon the record and files in said cause in said court and upon the records and files in said cause in the office of the special master.

STONE & GRAY,
Solicitors for Defendants.
F. A. BAKER,
Solicitor for Pewabic Min'g Co.

Endorsed: U. S. circuit court, the 6th circuit, western dist. of Mich., northern division. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Co. *et al.* Motion for further directions. Filed October 10, 1890. F. M. Moore, dep. clerk. Stone & Gray, sol'rs for d'f'ts.

66 In the Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and Pewabic Copper Company, Defendants.

Exceptions taken by the defendants The Pewabic Mining Company to the report of Peter White, Esq., the special master to whom was referred by the order of this court the ascertainments of the debts and assets of The Pewabic Mining Company, defendant, which report of the said special master bears date September 18, 1890, and was filed with the clerk of this court on the same day, these defendants, The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, and The Pewabic Copper Company, first alleging and showing to the court that no opportunity was given by said special master to these defendants to appear and object or file objections to the draft of said report.

67 First exception. For that the said special master hath not ascertained and reported the assets of the Pewabic Mining Company nor the value thereof.

Second exception. For that the said special master hath not ascertained and reported the indebtedness or debts of the said Pewabic Mining Company.

Third exception. Because said special master hath not taken and stated an account between this defendant company and Johnson Vivian, Thomas H. Perkins, and Daniel L. Demmon, surviving directors of said Pewabic Mining Company, and the representatives

of Henry Billings and Alden B. Buttrick, deceased, former directors of said Pewabic Mining Company.

Fourth exception. Because said special master hath advertised the property or some of the property for sale, contrary to the express decree and order of this court.

Wherefore the said defendants do except to the said report and appeal therefrom to the judgment of this court.

STONE & GRAY,
Solicitors for Defendants.
F. A. BAKER,
Solicitor for the Defendant The Pewabic Min. Co.

68 (Endorsed:) The U. S. circuit court, 6th circuit, western dis. of Mich. & northern div. Thomas B. Mason *et al. vs.* The Pewabic Mining Co. *et al.* Exceptions to master's report. Filed Oct. 16th, 1890. F. M. Moore, dep. clerk.

69 In the Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHN- VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and Pewabic Copper Company, Defendants.

Exceptions taken by Daniel L. Demmon, Thomas H. Talbot, Thomas H. Perkins, Henry J. Stevens, and Franklin Mining Company, claimants against the Pewabic Mining Company and Thomas H. Perkins, Daniel L. Demmon, and Johnson Vivian, who jointly make claim against said defendant, Pewabic Mining Company, to the report of Hon. Peter White, Esq., the special master, to whom was referred by the order of this court the ascertainment of the debts of The Pewabic Mining Company, defendant, which report of the said special master bears date September 18th, 1890, and was filed with the clerk of this court on the same day.

These claimants, Daniel L. Demmon, Thomas H. Talbot, Thomas H. Perkins, Henry J. Stevens, and Franklin Mining Company, each for themselves and itself, and Thomas H. Perkins, Daniel L. Demmon, and Johnson Vivian, for themselves, first alleging and showing to the court that no opportunity was given to either or any of said parties by the said special master to appear and object
70 or file objections to the draft of said report.

First exception. For that the said special master hath not ascertained and reported the assets of the Pewabic Mining Company nor the value thereof.

Second exception. For that the special master hath not ascertained and reported the indebtedness or debts of the said Pewabic Mining Company.

Third exception. Because said special master hath not taken and stated an account between this defendant company and Johnson Vivian, Thomas H. Perkins, and Daniel L. Demmon, surviving directors of said Pewabic Mining Company, and the representatives of Henry Billings and Alden B. Buttrick, deceased, former directors of said Pewabic Mining Company.

Fourth exception. Because said special master hath not examined said claims or given said claimants a hearing before the filing of said report.

Fifth exception. Because said special master had not examined any of said accounts or given the claimants hearing thereon according to the express direction of the decree and order of this court.

Wherefore the said claimants do except to the said report and appeal therefrom to the judgment of this court.

R. A. MONTGOMERY,

Solicitor for Claimants, Thomas H. Talbot, Daniel L. Demmon, Thomas H. Perkins, Henry J. Stevens, Franklin Mining Company, and Daniel L. Demmon, Thomas H. Perkins, and Johnson Vivian, Joint Claimants Against the Pewabic Mining Company.

71 [Endorsed:] The circuit court of the United States for the sixth circuit, western district of Michigan, northern division. In equity. Thomas H. Mason *et al.*, complainants, *vs.* Penabic Mining Company *et al.*, defendants. Exceptions to master's report. Filed Oct. 17th, 1890. F. M. Moore, dep. clerk. R. A. Montgomery, solicitor for claimants.

72 U. S. Circuit Court, West. Dist. Mich., Nor. Div.

WILLIAM H. MASON *et al.*
vs.
THE PEWABIC MINING CO. *et al.*

Overrule the motion to strike from the files the master's report.

Sustain the exceptions to the report and recommit the same to the master for further and final consideration of the matters referred to him, excepting so much of the said report as ascertainr and reports the amount of the indebtedness of the Co. on the 26th day of March, 1884, as to which the said report is approved and confirmed.

And, for the purpose of fixing the upshot price at the sale, the amount of such indebtedness is now here found and determined to have been on that day the sum of $80,191.20, and this sum, with the interest thereon from that date plus $50,000, will be the starting point for the bidding at the sale.

Nothing is now determined as to the equities of any of the parties in respect to their dealings with such indebtedness or any part thereof.

Direct the master to postpone sale until six weexs' notice is given after this date.

Let an order be drawn accordingly.

H. F. SEVERENS, *Judge.*

(Endorsed:) The circuit court of the United States for the western district of Michigan, northern division. William H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Opinion on motions. Filed Oct. 25, 1890. C. L. Fitch, clerk.

73 Suit Pending in the Circuit Court of the United States for the Western District of Michigan, Northern Division.

Before the Honorable Henry F. Severens, district judge, at chambers, in the city of Grand Rapids, in said district, on Saturday, the twenty-fifth day of October, A. D. 1890.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

The motion to strike the master's report from the files and the exceptions filed to said report coming on to be heard together by the consent of the parties, Mr. Russell is heard for the complainants, and Mr. Ostrander, Mr. Stone, and Mr. Baker opposed, and thereupon it is ordered and adjudged as follows, to wit: First, that the said motion be, and the same hereby is, denied; second, that so much of said report as ascertains and reports the amount of the indebtedness of the Pewabic Mining Company on the 26th day of March, A. D. 1884, be, and the same hereby is, approved and confirmed; third, that the exceptions to said report otherwise are sustained, and the same is hereby recommitted to the master for further and final consideration of the other matters referred to him, to wit, other than the ascertainment of the indebtedness on the day last aforesaid; fourth, that for the purpose of fixing the upshot
74 price at the sale the amount of such indebtedness on said day is hereby found and determined by the court to have been the sum of $80,191.20; fifth, that the last-named sum, with interest thereon from the last-named date, plus $50,000 shall be the starting point for the bidding at the sale; sixth, that the sale heretofore decreed in this cause do take place after six weeks' notice thereof subsequent to the date of this order shall have been given by said master, who is hereby directed to postpone sale until after such notice and then to make said sale; seventh, all questions of any of the parties with respect to their dealings with the indebtedness of said company or any part thereof are hereby expressly reserved.

H. F. SEVERENS,
District Judge.

(Endorsed:) The circuit court of the United States for the western district of Michigan, northern division. Thomas H. Mason *et al. vs.* Pewabic Mining Company *et al.* Order. Filed Nov. 4th, 1890. C. L. Fitch, clerk.

75 U. S. Circuit Court, Western Dis. Michigan, Northern Division. In Equity.

THOMAS H. MASON *et al.*
vs.
THE PENABIC MINING COMPANY & Others.

The complainants hereby undertake and agree to bid at the sale ordered in this cause the sum of two hundred and fifty thousand dollars ($250,000).

DICKINSON, THURBER & HOSMER,
Sol'rs for Comp.,

Per A. R.
ALFRED RUSSEL, *Of Counsel for Comp.*

Grand Rapids, 14 Oct., 1890.

(Endorsed:) No. 46. U. S. circuit court, W. D. Mich., N. D. In equity. Thos. H. Mason *et al. vs.* Pewabic M. Co. Undertaking of comp's to bid $250,000. This paper delivered to me Oct. 14th, 1890, during pending of motion for confirmation of master's report. H. F. Severens, judge. Filed Dec. 15, 1890. C. L. Fitch, clerk.

76 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, W. HART SMITH, & SULLIVAN BALLOU, Complainants,
vs.
THE PENABIC MINING COMPANY, JOHNSON VIVIAN, ALDEN BUTTRICK, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

To said court:

Your petitioners, "The Penabic Mining Company," Johnson Vivian, Alden B. Buttrick, & Daniel L. Demmon, respectively represent to the court that they are interested in the above suit as defendants, and that your petitioner The Pewabic Mining Company is the corporation whose property, consisting of copper mining property, has been ordered sold and is advertised for sale on the twentieth instant, and your petitioners, Vivian, Buttrick, and Demmon, are interested as former directors of said Pewabic Mining Company and as present shareholders thereof and as creditors thereof.

Your petitioners further say that a severe financial depression non exists all over the country, and that it especially effects mining stocks and mining property, and that it is now impossible to borrow any consider*ation* sum of money, no matter how valuable the
77 collateral securities offered may be; that the banks all over the country are calling in loans, and that there is a great stringency in the money market. Your petitioner represents to the court that the condition of the money market is such as to prevent a proper competition at the sale if the sale of the Pewabic Mining

Company's mining property occurs at the time advertised, viz., the twentieth instant. Your petitioners refer to the affidavit of S. L. Smith, hereto attached, and make said affidavit a part of this their petition.

Your petitioners further state that they have good reason to believe and do believe that of a postpon-ment of said sale may be had for the period of sixty days such postponement would materially increase the *proof* bid for such property, but that if a sale of said property is had at the date advertised it will be at a great sacrifice and at a price largely below its actual worth.

Your petitioners pray for a postponement of said sale, and that an order of this court may be made directing such postponement, and for further directions in relation to such sale.

THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
ALDEN B. BUTTRICK,
DANIEL L. DEMMON,
By SAM. L. SMITH, *Ag'nt.*

STATE OF MICHIGAN, } ss:
County of Wayne, }

S. L. Smith, being by me duly sworn, deposes and says:

That he has heard read the above petition and knows its contents; that he is familiar with the facts, circumstances, and matters set forth in said petition; that said petition is true as to the matters therein set forth, except as to those stated on information or belief, and as to those matters he believes it to be true.

78 SAM. L. SMITH.

Subscribed and sworn to before me this twelfth day of December, 1890.

FRED. H. WARREN,
Notary Public, Wayne Co., Mich.

79 BOSTON, MASS., *Dec.* 10, 1890.

DEAR SIR: You have asked of us an expression of our opinion as to whether or not a compulsory sale of the property of the Pewabic Mining Company can be reasonably expected to result favorably to the interest of the stockholders if made at the present time.

Our opinion is as follows:

The present financial condition as extremely unfavorable to a compulsory sale of any large property.

There as extreme stringency in the money market, and no large sum of money could be obtained now, except upon unusually good security and at high rates of interest.

A more unfavorable time than the present for such a compulsory sale could hardly be expected.

This is especially true of mineral land and mining property. A

present forced sale of a copper mine would almost inevitably involve a ruinous sacrifice.

CLARK, WARD & CO.
D. H. DARLING & CO.

THOMAS H. PERKINS.
CHASE & BARSTOW.
JOHN C. WATSON.
J. W. DAVIS.
M. R. BALLOU.
HARRY M. BATES.
C. R. MILLS.

To D. L. Demmon, treasurer Pewabic Mining Company.

80 Thomas H. Perkins, of T. H. Perkins & Co., prominent brokers.
Chase & Barstow, bankers and brokers.
John C. Watson, president and director of several mining and land companies.
J. W. Davis, stock broker, member of Boston Stock Exchange.
M. R. Ballou, chairman Boston Stock Exchange.
Harry M. Bates, stock broker, member of Boston Stock Exchange.
C. R. Mills, stock broker, member of Boston Stock Exchange.
Clark, Ward & Co., bankers & brokers.
D. H. Darling & Co., bankers and brokers.

81 BOSTON, MASS., *Dec. 10th*, 1890.

DEAR SIR: You have asked of us an expression of our opinion as to whether or not a compulsory sale of the property of the Pewabic Mining Company can be reasonably expected to result favorably to the interest of the stockholders if made at the present time. Our opinion is as follows:

The present financial condition is extremely unfavorable to a compulsory sale of any large property.

There is extreme stringency in the money market, and no large sum of money could be obtained now, except upon unusually good security and at high rates of interest.

A more unfavorable time than the present for such a compulsory sale could hardly be expected.

This is especially true of mineral land and mining property. A present forced sale of a copper mine would almost inevitably involve a ruinous sacrifice.

A. S. BIGELOW.
CHAS. VAN BURNT.
R. E. DEMMON.
S. F. WILKINS.
IRVING A. EVANS.
STEPHEN C. CROSBY.
FRANK W. REYNOLDS.
CHAS. O. BILLINGS.
JOHN C. PAIGE.

To D. L. Demmon, treasurer Pewabic Mining Company.

82 A. S. Bigelow, treasurer Tamarack, Osceola, Boston & Montana, Butte & Boston, and other copper mining companies.

Chas. Van Burnt, director in several large copper mining Cos.

R. E. Demmon, president Howard National bank, Boston, Mass.

S. F. Wilkins, cashier Howard National bank, Boston, Mass.

Irving A. Evans, prominent banker and broker, member of Boston and New York Stock Exchanges.

Stephen M. Crosby, president Massachusetts Loan & Trust Co.

Chas. O. Billings, president National bank.

John C. Paige, prominent insurance agent, Boston, Mass.

83 BOSTON, MASS., 10 *Dec.*, 1890.

A. G. Stanwood, treasurer, P. O. Box 5095, Fiske building, 89 State St.

Mr. D. L. Demmon, treasurer Pewabic Mining Co., Boston, Mass.

DEAR SIR: In reply to your request for my opinion as to whether the property of the Pewabic Mining Co., advertised for sale by public auction, would at that date bring a fair price, I would give it as my judgment that the condition of the money market, not alone here but throughout the world, is such that any attempt to realize at a forced sale anything approaching the true value of the Pewabic or any other mining property would be unsuccessful. I think, however, that it is the general opinion that affairs will perceptibly improved soon after the new year opens.

Yours truly, A. G. STANWOOD, *Treasurer*.

84 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, W. HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, ALDEN B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

WAYNE COUNTY, *ss:*

S. L. Smith, being by me duly sworn, deposes and says:

That he is a resident of Detroit, Wayne county, Michigan; that he has been familiar with the Boston market for copper shares and properties for thirty years, having dealt largely therein and having been identified with a considerable number of copper companies all these years and is now a director in five different companies, and

further says he is especially familiar with the Boston market and Boston financial situation that best promotes favorable sales of such properties.

That he is connected with the Franklin Mining Company and is a stockholder in the Pewabic Mining Company to the extent of about two thousand shares.

85 That he has been in negotiation with certain capitalists to procure money to bid at the sale of the Pewabic Mining Company's property, and had, prior to the present extraordinary distress in the money market, pledges of several hundred thousand dollars for that purpose, but that now, owing to the want of confidence by moneyed institutions and the actual inability of them to supply the needed money to carry on the ordinary business of the country, these parties have been compelled to cancel their agreement to contribute to this purchase.

That in one case a promise to contribute one hundred thousand dollars was made, but, owing to failures and shrinkage of values, no portion thereof and not a dollar thereof can at present be realized from this source for this purchase; that in his own case he had agreed to put up fifty thousand dollars toward purchasing the Pewabic Mining Company's property at such sale, but, owing to the shrinkage in the value of copper stocks that he intended to sell for the purpose of raising the money for that purpose, he would now be compelled to sacrifice fifty thousand dollar- to raise this sum at this time, as deponent verily believes, and because of such sacrifice deponent will be unable at the present time to make the proposed subscription for the purpose of buying the Pewabic Mining Company's property.

Deponent further says that he has just returned from Bos-
86 ton, having left there on Wednesday afternoon, the tenth instant.

That he had been there endeavoring to arrange with a minority of the Pewabic Mining Company stockholders to purchase the Pewabic Mining Company's property at its full value at the sale advertised for the twentieth instant, but that he had found it impossible to secure monies already promised, and that said property must, as deponent verily believes, sell for hundreds of thousands of dollars less than its actual value if sufficient time is not given to reach an easier condition of the country's finances.

Deponent further says that the Franklin Mining Company desired *ti* bid at the sale of the Pewabic Mining Company's property, and at a meeting of the stockholders of said Franklin Mining Company authority was given to its board of directors to bid at such sale and buy said property, and no limit as to the sum to be paid therefor was given or fixed; that deponent is a director in the board of said *said* Franklin Mining Company and knows that the embarrassed condition of the money market will prevent said company from bidding as large a sum as it would bid under more favorable financial conditions.

Deponent further says that he attaches hereto several letters from men of high standing in financial and business circles in the city

of Boston, Massachusetts, which give their views as to the
87 financial situation and as to the difficulty of selling at this time such property as that of the Pewabic Mining Company; and deponent says that he is familiar with the signature of the men whose names are attached and signed to said letters, and is familiar with their occupations, and that their signatures thereto are genuine, as deponent verily believes, and their occupation is correctly stated therein, and the expression of *of* opinion therein given *was* given freely and as their unbiased judgment as to the facts therein stated, as deponent verily believes.

Deponent further says that from the best information he can get and according to the best judgment of the best financiers of the country, so far as deponent is able to ascertain their views, such financial condition in the country is liable to be transitory and will very soon be followed by a better condition of finances, and deponent verily believes that a postponement of sixty days or thereabouts will put such sale beyond the financial distress now existing and enable a sale to be made which will secure to all persons interested a full value for the property of said Pewabic Mining Company.

Deponent further says that, as hereinbefore stated, he is the owner of about two thousand shares of the stock of said Pewabic Mining
Company; and further says that in addition thereto he has
88 control of about eight thousand shares; that the entire of the shares of said company is forty thousand; that deponent owns or represents about one-quarter of the entire thereof.

And further deponent sayeth not. SAM'L L. SMITH.

Subscribed and sworn to before me this 12th day of Dec., 1890.

FRED. H. WARREN,
Notary Public, Wayne Co., Mich.

(Endorsed:) The circuit court of the United States for the western district of Michigan, northern division. In equity. Thos. F. Mason *et al. vs.* Pewabic Mining Co. *et al.* Petition. Filed Dec. 15, 1890. C. L. Fitch, clerk.

89 "EXHIBIT A."

James V. Campbell, Member N. Y. Exchange. Frank P. Boughton.

Campbell, Boughton & Co., bankers & brokers, 27 Larned street, west; telephone No. 702.

DETROIT, MICH., *Dec.* 13, 1890.

New York Bank Statement.

	Increase.	Decrease.
Loans	------	$501,600
Specie	$2,501,800	
Legal tenders	490,500	177,700
Deposits		
Circulation	19,200	
Reserve	3,036,725	

The banks are now 607,075 above legal reserve.
For week ending Dec. 12, '90.

E. W., *Pt.*

90 The Circuit Court of the United States for the Western District of Michigan, Northern Division.

THOMAS H. MASON *et al.*
vs.
THE PEWABIC MINING COMPANY *et al.*

UNITED STATES OF AMERICA, *Western District of Michigan*, } *ss:*

Don M. Dickinson, being duly sworn, deposes and says that Honorable Alfred Russel and himself now represent stockholders of the said Pewabic Mining Company who hold upwards of twenty-one thousand out of a total of forty thousand shares; that all of the holders of said shares so represented by them are opposed to any delay in the sale of said assets and express the belief as a reason for desiring said sale that parties who have prepared to bid, and who have held themselves prepared during the late stringency in the money market and for two months, at a sacrifice of the use of money, may not continue to hold themselves to or be able to bid at any adjourned day.

Affiant further says that, so far as the Quincy Mining Company is concerned, the chances of its bidding will grow less from day to day, owing to the change in the copper market and of the depression in its own stock.

Affiant further says that he represents one bidder, other than the Quincy Mining Company, who has held himself in readiness to bid for two months last past and whose agent is now on the
91 ground in Houghton county waiting for the sale as advertised.

Affiant further says that he is informed and believes that there is a powerful bidder, made up of a syndicate to purchase this property, which is hostile to the Quincy Mining Company and to the said bidder represented by deponent, who will certainly compete for the purchase of the property if the sale shall proceed on the 20th inst.

Affiant further says that he himself personally knows that still another party of capitalists, forming as powerful a financial combination as can be got together in New York or in this country, have interested themselves so far as to examine as to the situation of the property and the underground workings of the mines, including the Pewabic, the Franklin, and the Quincy mines, since it was known that this property was to go upon the market, but whether the last-mentioned combination will bid or is organized to bid affiant is not informed, as such combination would not advise affiant as to its purposes, knowing affiant's relation as representing a bidder.

Affiant further says that he is a member of the board of direction of the First National Bank of Detroit, which bank receives every

morning by telegram a statement showing the status of the banks in New York at closing hours the day before, and hereto attached, marked "Exhibit A," is a copy of the statement of the con-
92 dition of *of* the associated banks of New York as so received at the First National Bank of Detroit on the 13th inst., the copy hereto attached being initialed by the president of said bank, Emory Wendell.

Affiant further says that he believes that any further postponement of the sale will greatly imperil the interest of such stockholders as are actuated only by the desire to realize from this sale a large price for the property for distribution.

DON M. DICKINSON.

Sworn and subscribed before me this 15th day of December, A. D. 1890.

CHARLES L. FITCH,
U. S. Commissioner, West. Dist. of Mich.

(Endorsed:) U. S. circuit court, western district of Mich., northern division. Thomas H. Mason *et al. v.* The Pewabic Mining Company *et al.* Affidavit of Don M. Dickinson against motion for postponement of sale, fixed for Dec. 20, 1890. Dickinson, Thurber & Hosmer, sol'rs for compl'ts. Alfred Russel, of counsel. Filed Dec. 15, 1890. C. L. Fitch, clerk.

93 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS HART MASON, W. HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, ALDEN BUTTRICK, DANIEL L. DEMMON, and The Pewabic Copper Company, Defendants.

Suit pending in the sixth judicial circuit, in chancery, on the 15th day of December, A. D. 1890, before the Honorable Henry F. Severens, district judge, at chambers, in the city of Grand Rapids, in said district, on Monday, December 15th, 1890.

On read- and filing the petition of the Pewabic Mining Co., Daniel L. Demmon, Johnson Vivian, and Alden B. Buttrick, defendants in said cause, and after hearing R. C. Ostrander, R. A. Montgomery, and F. A. Baker for the petitioners, and Alfred Russel and Don M. Dickinson for the complainants, and after due consideration of the petition and affidavits and the counter-showing, it is ordered by the court that Special Master Peter White be, and he is hereby, ordered to postpone the sale of the property of the Pewabic Mining Co., that he has advertised for December 20, 1890, from that date until Saturday, the *ML*th day of January, 1891, at the same hour and place, and that he publish due notice of said adjournment.

HENRY F. SEVERENS,
District Judge.

94 [Endorsed:] The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Order directing postponement of sale. Filed Dec. 15th, 1890. C. L. Fitch, clerk.

95 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

In the matter of the claim of Johnson Vivian against The Pewabic Mining Company.

Your petitioner, Johnson Vivian, respectfully represents unto the court that he has presented a claim against The Pewabic Mining Company to Hon. Peter White, special master, who was by a decree of this court appointed special master for the purpose, among other things, of ascertaining the debts of said Pewabic Mining Company; that your petitioner submitted to the said special master his proofs in relation to said claim and all thereof, and that proofs therein were all concluded more than fifty days ago.

Your petitioner further represents that he has reason to believe and does believe that said special master is withholding his report thereon and delaying the same and intending to delay the same until after the sale of the property of the said defendant Pewabic Mining Company, and that such delay is not according to the

96 just rights and equities of your petitioner.

Your petitioner therefore prays that an order may be granted and entered directing the said special master, Hon. Peter White, to forthwith pass upon the claim of your petitioner above referred to and make and file his report in relation thereto.

And your petitioner will ever pray.

This petition is based on the records and files in this cause and on the affidavit of Richard A. Montgomery made on this day and hereto attached and filed herewith.

JOHNSON VIVIAN, *Petitioner*,
By R. A. MONTGOMERY, *His Att'y.*

STATE OF MICHIGAN, } ss:
County of Ingham, }

Richard A. Montgomery, being by me duly sworn, deposes and says that he is the attorney and solicitor for the above-named petitioner; that he prepared and has read and is familiar with the contents of the above petition and is familiar with the subject-matter thereof and therein referred to; that said petition is true except as

to the matters therein stated to be on information and belief, and as to those matters deponent verily believes it to be true.

RICHARD A. MONTGOMERY.

Subscribed and sworn to before me this 29th day of December, A. D. 1890.

E. B. WOOD,
Notary Public, Ingham County, Mich.

97 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

INGHAM COUNTY, *ss:*

Richard A. Montgomery, being by me duly sworn, deposes and says that he is the attorney and solicitor for the claimant named in the within petition in the within-mentioned matter.

That all the proofs in relation to said claim were made and finished on or before the 8th day of November, 1890; that fifty days have elapsed since finishing said proofs in relation to said claim, and that no report in relation thereto has been made and filed by the special master herein, as deponent is informed and verily believes.

Deponent further says that he is informed and has good reason to believe and does believe that the said special master intends to withhold making a report thereon until after a sale shall be had of the Pewabic Mining Company's property under a decree pronounced and entered in this cause without regard to the time when said sale shall take place.

RICHARD A. MONTGOMERY.

Subscribed and sworn to before me this 29th day of December, A. D. 1890.

E. B. WOOD,
Notary Public, Ingham Co., Michigan.

98 [Endorsed:] The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al.*, complainants, *vs.* The Pewabic Mining Company *et al.*, defendants. Filed Jan. 5, 1891. C. L. Fitch, clerk. Petition. R. A. Montgomery, attorney and sol. for claimants.

99 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

In the matter of the claim of Daniel L. Demmon against The Pewabic Mining Company.

Your petitioner, Daniel L. Demmon, respectfully represents unto the court that he has presented a claim against the Pewabic Mining Company to Hon. Peter White, special master, who was by a decree of this court appointed special master for the purpose, among other things, of ascertaining the debts of said Pewabic Mining Company; that your petitioner submitted to the said special master his proofs in relation to said claim and all thereof, and that proofs therein were all concluded more than fifty days ago.

Your petitioner further represents that he has reason to believe and does believe that said special master is withholding his report thereon and delaying the same and intending to delay the same until after the sale of the property of the said defendant, Pewabic Mining Company, and that such delay is not according to the just rights — equities of your petitioner.

100 Your petitioner therefore prays that an order may be granted and entered directing the said special master, Hon. Peter White, to forthwith pass upon the claim of your petitioner above referred to and make and file his report in relation thereto.

And your petitioner will ever pray.

This petition is based on the records and files in this cause and on the affidavit of Richard A. Montgomery made on this day and hereto attached and filed herewith.

DANIEL L. DEMMON, *Petitioner*,
By R. A. MONTGOMERY, *His Att'y.*

STATE OF MICHIGAN, } ss:
County of Ingham, }

Richard A. Montgomery, being by me duly sworn, deposes and says that he is the attorney and solicitor for the above-named petitioner; that he prepared and has read and is familiar with the contents of the above petition and is familiar with the subject-matter thereof and therein referred to; that said petition is true except as to the matters therein stated to be on information and belief, and as to those matters deponent verily believes it to be true.

RICHARD A. MONTGOMERY.

Subscribed and sworn to before me this 29th day of December, A. D. 1890.

E. B. WOOD,
Notary Public, Ingham County, Mich.

101 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

INGHAM COUNTY, *ss:*

Richard A. Montgomery, being by me duly sworn, deposes and says that he is the attorney and solicitor for the claimant named in the within petition in the within-mentioned matter.

That all the proofs in relation to said claim were made and finished on or before the 8th day of November, 1890.

That fifty days have elapsed since finishing said proofs in relation to said claim; that no report in relation thereto has been made and filed by the special master herein, as deponent is informed and verily believes.

Deponent further says that he is informed and has good reason to believe and does believe that the said special master intends to withhold making a report thereon until after a sale shall be had of the Pewabic Mining Company's property under a decree pronounced and entered in this cause without regard to the time when said sale shall take place.

RICHARD A. MONTGOMERY.

Subscribed and sworn to before me this 29th day of December, A. D. 1890.

E. B. WOOD,
Notary Public, Ingham County, Mich.

102 [Endorsed:] The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al.*, complainants, *vs.* The Pewabic Mining Company *et al.*, defendants. Petition. Filed Jan. 5th, 1891. C. L. Fitch, clerk. R. A. Montgomery, att'y and sol. for claimants.

103 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

In the matter of the claim of Thomas H. Perkins, Johnson Vivian, and Daniel L. Demmon, joint claimants against The Pewabic Mining Company.

Your petitioner-, Thomas H. Perkins, Johnson Vivian, and Dan-

iel L. Demmon, joint claimants, respectfully represent unto the court that they have presented a claim against the Pewabic Mining Company to Hon. Peter White, special master, who was by a decree of this court appointed special master for the purpose, among other things, of ascertaining the debts of said Pewabic Mining Company.

That your petitioners submitted to the said special master their proofs in relation to said claim and all thereof, and that proofs therein were all concluded more than fifty days ago.

Your petitioners further represent that they have reason to believe and do believe that said special master is withholding his report thereon and delaying the same and intending to delay the same until after the sale of the property of the said defend-
104 ant, Pewabic Mining Company, and that such delay is not according to the just rights and equities of your petitioners.

Your petitioners therefore pray that an order may be granted and entered directing the said special master, Hon. Peter White, to forthwith pass upon the claim of your petitioners above referred to and make and file his report in relation thereto.

And your petitioners will ever pray.

This petition is based on the records and files in this cause and on the affidavit of Richard A. Montgomery made on this day and hereto attached and filed herewith.

THOMAS H. PERKINS,
JOHNSON VIVIAN,
DANIEL L. DEMMON,
Petitioners,
By R. A. MONTGOMERY,
Their Att'y.

STATE OF MICHIGAN, } ss:
County of Ingham, }

Richard A. Montgomery, being by me duly sworn, deposes and says that he is the attorney and solicitor for the above-named petitioners; that he has prepared and has read and is familiar with the contents of the above petition and is familiar with the subject-matter thereof and therein referred to; that said petition is true except as to the matter therein stated to be on information and belief, and as to those matters deponent verily believes it to be true.

RICHARD A. MONTGOMERY.

Subscribed and sworn to before me this 29th day of December, A. D. 1890.

E. B. WOOD,
Notary Public, Ingham County, Mich.

105 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

INGHAM COUNTY, *ss:*

Richard A. Montgomery, being by me duly sworn, deposes and says that he is the attorney and solicitor for the claimants named in the within petition in the within-mentioned matter; that all the proofs in relation to said claim were made and finished on or before the 8th day of November, 1890; that fifty days have elapsed since finishing said proofs in relation to said claim, and that no report in relation thereto has been made and filed by the special master herein, as deponent is informed and verily believes. Deponent further says that he is informed and has good reason to believe and does believe that the said special master intends to withhold making a report thereon until after a sale shall be had of the Pewabic Mining Company's property under a decree pronounced and entered in this cause without regard to the time when the said sale shall take place.

RICHARD A. MONTGOMERY.

Subscribed and sworn to before me this 29th day of December, A. D. 1890.

E. B. WOOD,
Notary Public, Ingham County, Mich.

106 [Endorsed:] The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al.*, complainants, *vs.* The Pewabic Mining Company *et al.*, defendants. Filed Jan. 5th, 1891. C. L. Fitch, clerk. Petition. R. A. Montgomery, att'y and sol. for claimants.

107 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

In the matter of the claim of the Franklin Mining Company against The Pewabic Mining Company.

Your petitioner, The Franklin Mining Company, respectfully

represents unto the court that it has presented a claim against the Pewabic Mining Company to Hon. Peter White, special master, who was by a decree of this court appointed special master for the purpose, among other things, of ascertaining the debts of said Pewabic Mining Company; that your petitioner submitted to the said special master its proofs in relation to said claim and all thereof, and that proofs therein were all concluded more than fifty days ago.

Your petitioner further represents that it has reason to believe and does believe that said special master is withholding his report thereon and delaying the same and intending to delay the same until after the sale of the property of the said defendant, Pewabic Mining Company, and that such delay is not according to the just rights and equities of your petitioner.

108 Your petitioner therefore prays that an order may be granted and entered directing the said special master, Hon. Peter White, to forthwith pass upon the claim of your petitioner above referred to and make and file his report in relation thereto.

And your petitioner will ever pray.

This petition is based on the records and files in this cause and on the affidavit of Richard A. Montgomery made on this day and hereto attached and filed herewith.

THE FRANKLIN MINING CO., *Petitioner*,
By R. A. MONTGOMERY, *Att'y.*

STATE OF MICHIGAN, } ss:
County of Ingham, }

Richard A. Montgomery, being by me duly sworn, deposes and says that he is the attorney and solicitor for the above-named petitioner; that he prepared and has read and is familiar with the contents of the above petition and familiar with the subject-matter thereof and therein referred to; that said petition is true except as to the matters therein stated to be on information and belief, and as to those matters deponent verily believes it to be true.

RICHARD A. MONTGOMERY.

Subscribed and sworn to before me this 29th day of December, A. D. 1890.

EUGENE B. WOOD,
Notary Public, Ingham County, Mich.

109 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

INGHAM COUNTY, ss:

Richard A. Montgomery, being by me duly sworn, deposes and

says that he is the attorney and solicitor for the claimant named in the within petition in the within-mentioned matter.

That all the proofs in relation to said claim were made and finished on or before the 8th day of November, 1890; that fifty days have elapsed since finishing *and* proofs in relation to said claim, and that no report in relation thereto has been made and filed by the special master herein, *and* deponent is informed and verily believes.

Deponent further says that he is informed and has good reason to believe and does believe that the said special master intends to withhold making a report thereon until after a sale shall be had of the Pewabic Mining Company's property under a decree pronounced and entered in this cause without regard to the time when said sale shall take place.

RICHARD A. MONTGOMERY.

Subscribed and sworn to before me this 29th day of December, A. D. 1890.

E. B. WOOD,
Notary Public, Ingham County, Mich.

110 [Endorsed:] The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al.*, complainants, *vs.* The Pewabic Mining Company *et al.*, defendants. Filed Jan. 5, 1891. C. L. Fitch, clerk. Petition. R. A. Montgomery, att'y and sol. for claimants.

111 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

In the matter of the claim of Thomas H. Perkins against The Pewabic Mining Company.

Your petitioner, Thomas H. Perkins, respectfully represents unto the court that he has presented a claim against The Pewabic Mining Company to Hon. Peter White, special master, who was by a decree of this court appointed special master for the purpose, among other things, of ascertaining the debts of said Pewabic Mining Company; that your petitioner submitted to the said special master his proofs in relation to said claim and all thereof, and that proofs therein were all concluded more than fifty days ago.

Your petitioner further represents that he has reason to believe and does believe that said special master is withholding his report thereon and delaying the same and intending to delay the same until after the sale of the property of the said defendant, Pewabic

Mining Company, and that such delay is not according to the just rights and equities of your petitioner.

112 Your petitioner therefore prays that an order may be granted and entered directing the said special master, Hon. Peter White, to forthwith pass upon the claim of your petitioner above referred to and make and file his report in relation thereto.

And your petitioner will ever pray.

This petition is based on the record and files in this cause and on the affidavit of Richard A. Montgomery made on this day and hereto attached and filed herewith.

THOMAS H. PERKINS, *Petitioner*,
By R. A. MONTGOMERY, *His Att'y.*

STATE OF MICHIGAN, } ss:
County of Ingham, }

Richard A. Montgomery, being duly sworn, deposes and says that he is the attorney and solicitor for the above-named petitioner; that he prepared and has read and is familiar with the contents of the above petition and is familiar with the subject-matter thereof and therein referred to; that said petition is true except as to the matters therein stated to be on information and belief, and as to those matters deponent verily believes it to be true.

RICHARD A. MONTGOMERY.

Subscribed and sworn to before me this 29th day of December, A. D. 1890.

E. B. WOOD,
Notary Public, Ingham County, Mich.

113 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

INGHAM COUNTY, ss:

Richard A. Montgomery, being by me duly sworn, deposes and says that he is the attorney and solicitor for the claimant named in the within petition in the within-mentioned matter.

That all the proofs in relation to said claim were made and finished on or before the 8th day of November, 1890; that fifty days have elapsed since finishing said proofs in relation to said claim, and that no report in relation thereto has been made and filed by the special master herein, as deponent is informed and verily believes.

Deponent further says that he is informed and has good reason to believe and does believe that the said special master intends to withhold making a report thereon until after a sale shall be had of the

Pewabic Mining Company's property under a decree prionounced and entered in this cause without regard to the time when said sale shall take place.

RICHARD A. MONTGOMERY.

Subscribed and sworn to before me this 29th day of December, A. D. 1890.

E. B. WOOD,
Notary Public, Ingham County, Mich.

114 [Endorsed:] The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al.*, complainants, *vs.* The Pewabic Mining Company *et al.*, defendants. Filed Jan. 5, 1891. C. L. Fitch, clerk. Petition. R. A. Montgomery, att'y and solicitor for claimant.

115 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

INGHAM COUNTY, *ss:*

Richard A. Montgomery, being by me duly sworn, deposes and says that, as attorney and solicitor for the claimants named in the five several petitions filed in this court on the 2nd inst., praying that an order might be granted and entered requiring Special Master Peter White to pass upon and report upon the claims of said petitioners, he prepared said petitions and on Monday, the 29th day of December, A. D. 1890, served a copy of each of said petitions on Peter White, said special master, by mailing the same to said Peter White, addressed to him at Marquette, Mich., which is his post-office address, and depositing the same in the post office at Lansing, Mich., on the 29th day of December, 1890, with postage prepaid thereon, and that at the same time deponent served a copy of each of said petitions on Hon. Don M. Dickinson by mailing the same to him at his address in Detroit, Mich., with postage prepaid thereon; and further deponent saith not.

R. A. MONTGOMERY.

Subscribed and sworn to before me this 5th day of January, A. D. 1891.

JAY P. LEE,
Notary Public, Ingham County, Mich.

116 Endorsed: The circuit court of the United States for the western district of Michigan, northern division. In equity.

Thomas H. Mason *et al.*, complainants, *vs.* The Pewabic Mining Company *et al.*, defendants. Filed January 6th, 1891. C. L. Fitch, clerk. R. A. Montgomery, soliciter for claimants.

117 United States courts, judges' rooms. Henry F. Severens, district judge.

GRAND RAPIDS, MICH., *June 2nd*, 1891.

Hon. Peter White.

MY DEAR SIR: Some of the parties in the Pewabic mine case complain because the master's report in regard to the matters not yet finally disposed of on the reference to you has not been made, and an order is asked requireing it to be filed.

I am not very definitely informed as to the progress made by you in prepareing your report or whether any and what reasons exist for further delay.

Be kind enough to inform me what the present status of the pending reference is and oblige,

Yours, &c., H. F. SEVERENS,
U. S. Judge.

118 Office of Peter White, insurance department.

MARQUETTE, MICH., *Jan. 3rd*, 1891.

Hon. H. F. Severens, U. S. judge.

DEAR SIR: Your letter of yesterday received to-night. You remark: "Some of the parties in the Pewabic mine case complain because the master's report in regard to the matters not yet finally disposed of on the reference to you has not been made, and an order is asked requiring it to be filed." Then you add: "I am not very definitely informed as to the progress made by you in preparing your report or whether any and what reasons exist for further delay."

To all of which I respectfully reply as follows:

Since filing my last report I made an order for a hearing here in my office, giving notice to all the different solicitors of all the parties in interest. They came and a very small amount of testimony was taken, of no great weight or importance, when Judge Stone, Mr. Ostrander, and Richard Montgomery asked that if the master could not go himself that he issue a commission to take testimony in Boston; that a large number of witnesses they desired to examine there, men who could not possibly come here, and books and vouchers that could not be brought away from Boston must be examined there, &c. I fully believed them that it was important and
119 necessary, and in opposition to solicitor Dunston, who insisted that all the testimony could be and should be taken here or at Houghton, I ruled that I would go to Boston and take the testimony myself, and then fixed Oct. 22nd and 23rd, and a day or two later I postponed the hearing in Boston to Oct. 27th. This was with the written consent of all the solicitors.

I was notified that they would require the books of Pewabic M'g

Co., which were in my possession, at the hearing in Boston, and I promised to have them there; so I lugged them on there, sending a part of them by express. I arrived in Boston Oct. 26th, and on the 27th no one came to the appointed place at the appointed hour or for hours afterward. I then went to Mr. Demmon's office; told him I was there to take any testimony they wished to have taken in the Pewabic case. He sent for lawyers Talbot — Stevens.

The first of these has filed a claim of $16,400 *vs.* Pewabic M'g Co.; the second a claim of $3,000; both for professional services, and they testified and procured quite a number of other lawyers who testified that their said bills for services were reasonable.

Mr. Demmon was sworn and testified as to the correctness of his own claim, that of Mr. Perkins, that of Mr. Talbot, and that of Mr. Stevens, but no evidence was offered or given as to the matters between the directors and the Pewabic M'g Co. or the Frank-
120 lin Company. The Pewabic books were not asked for or used, although I informed all the parties that I had them with me. The Franklin Mining Co. books were not introduced. None of the testimony I had been told at Marquette would be taken in Boston was offered or taken. None of the solicitors that had theretofore asked for this hearing were there. I should say that nine-tenths of the testimony that was taken was in support of a bill for legal services in favor of Thos. H. Talbot. A small amount of testimony was given as to the claims of Daniel Demmon and Thos. H. Perkins.

I advised them I would stay as long as there was any evidence to be given, but, as there was no more offered, on my third day there I adjourned the hearing *sine die.*

Since my return from Boston I think each one of the solicitors for defendants have either by letter or verbally asked me "When I was going to make my report."

Each time asked I have replied I would make a report at any time any solicitor requested me to, but not one of them has requested me to make a report earlier than the time I had set, viz., I told each one that, unless otherwise requested, I would after the sale report fully the sale and all the testimony and conclusions thereon and all matters to me referred, and no solicitor has objected to that course or requested me to report earlier.

121 A report from the master at this time on the testimony taken since my last report would not, in my opinion, do any person or party any good or harm and is therefore, I think, unnecessary.

If it established the validity of any claim of any person or corporation against the Pewabic Mining Company there would still be no money to pay any such claim after the sale — place and the sale confirmed by the court; so no one's rights can be prejudiced or jeopardized by the delay. Stidd, I am ready to make a report at any time if any solicitor request it; so why need the judge be asked to make an order that the master report?

The solicitors for complainants have given me notice that after the sale they will ask for a hearing, at which they will offer testi-

mony in rebuttal of all the evidence heretofore given by the defendants or claimants, so that is a reason for deferring my report.

I have considered the matter very carefully and impartially and conclude that *O* would very much like to have all the testimony in and hear the arguments of all sides before I make my report; otherwise I might be finding and reporting against my own previous convictions and conclusions.

The last order of the court given to me expressly directed me to proceed on the whole matter of reference to the master, in-
122 cluding the accounting against the directors, before making any further report.

Now, to do this involves the filing of an account or statement by the directors, which, by their solicitors, they have promised me since last July or August they would file, but so far have failed to do it. That part of the decree involves an examination by me of all the accounts — moneys received and paid out, including an exhaustive examination of the purposes of the disbursements from the time of the expiration of the charter, in 1884, until the decree.

There are thousands of items, and it is a work that, in my opinion, cannot properly be done before the matters pertaining to the sale are cleared away. I feel very certain, as I have said before, that no one's rights can be prejudiced by my delaying my report until after the sale is made, as no distribution of money can be made until the master has some in his hands to distribute and until after the confirmation by the court of the sale.

I presume I have replied to your letter at a greater length than necessary, but the affidavits of solicitor Montgomery, that I was purposely delaying my report to the injury of his clients, seem to me to require a full reply. There are yet weighty reasons why I should not make a report until I have heard all the evidence and the arguments, but I trust I have given enough to convince; and yet if the court sees any reason why I should make a report now and three or four hereafter I will obey with alacrity.

I am, my dear sir, with great respect, your ob't servant,

PETER WHITE.

123 [Endorsed:] The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Communication of the master, Peter White, to Judge Severens. Filed Jan. 5, 1891. C. L. Fitch, clerk.

124 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

Suit pending in said court on the fifth day of January, A. D. 1891, before the Honorable Henry F. Severens, district judge, at the city of Grand Rapids, in said district, at chambers.

The several petitions of Johnson Vivian, Daniel L. Demmon, Thomas H. Perkins, and the Franklin Mining Company, and the joint petition of Thomas H. Perkins, Johnson Vivian, and Daniel L. Demmon, praying respectively that an order may be entered in this cause requiring the special master, Peter White, to pass upon the claims of said petitioners respectively, and to make and file his report herein, having come on to be heard, and said petitions having been duly considered, and the communication of said special master having been filed in this cause, showing his reasons for having delayed making such report—

It is now ordered that the petitions aforesaid and each and every of them be, and the same hereby are, denied.

H. F. SEVERENS,
District Judge.

125 [Endorsed:] The circuit court of the United States for the western district of Michigan, southern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Chambers. Order denying petitions of Johnson Vivian and others. Filed Jan. 5, 1891. C. L. Fitch, clerk.

126 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS F. MASON, W. HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, ALDEN BUTTRICK, Daniel C. Demmon, Thomas H. Perkins, and The Pewabic Copper Company, Defendants.

Now come said defendants and move the court for an order postponing the sale of the Pewabic mine, so called, and the real estate and effects of the Pewabic Mining Company to some time beyond and later than January 24th, 1891, the date now fixed for such sale, and for a period of at least sixty (60) days beyond said January 24, 1891.

This motion is based upon the affidavit of Samual L. Smith, and

upon the known condition of the money market, and upon the known condition of the copper market and the market in copper stocks, and upon the files and records in this cause.

STONE AND GRAY,
F. A. BAKER,
Sol'rs for Defendants.

127 GENTS: Please to take notice that the foregoing and annexed are copies of a motion and of the affidavit upon which the same is based made and filed in said cause; that said motion will be brought on for hearing before his honor Judge H. F. Severens, at the Federal court-room, at Grand Rapids, Michigan, on Wednesday, January 14, 1891, at nine o'clock in the forenoon.

January 10th, 1891.

Yours very truly,

STONE AND GRAY,
F. K. BAKER,
Sol'rs for Defendants.

To Dickinson, Thurber & Stevenson, sol'rs for compl'ts.

128 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS F. MASON, W. HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, ALDEN BUTTRICK, Daniel L. Demmon, Thomas H. Perkins, and The Pewabic Copper Company.

STATE OF MICHIGAN, *County of Wayne,* } *ss:*

Samuel L. Smith, being duly sworn, deposes and says that he resides in Detroit, Wayne county, Michigan; that he has been for the past thirty years and is now familiar with the market for copper and for shares in copper mines and copper properties and is now a director in five different copper companies.

That he is especially familiar with the Boston copper market and the Boston financial situation, in which city copper stocks and properties are most largely represented and handled.

Deponent further says that on the evening of January sixth inst. he arrived in Boston for the purpose of ascertaining the condition of affairs financially and the prospect there was of raising a
129 sum of money sufficient to bid fairly for the Pewabic Mining Company, involved in this cause, on the 24th day of January, 1891.

That the Franklin Mining Company, by a vote of its shareholders, has instructed its directors to purchase said Pewabic mining property when the same shall be sold, and said directors expected to be able to bid upon said property on January 24th, 1891.

The deponent further says that he knows of a syndicate attempted to be formed, to which the Franklin Mining Company is not a party, to bid at said sale.

That he knows of no other bidders or proposed bidders, except the Quincy Mining Company or some one connected with that company.

Further, deponent says he is a director of the Franklin Mining Company.

That the assets of the company are now in copper, a large quantity of which is on hand; that since the present stringency in the money market arose or began there have been no considerable sales of copper by said Franklin Mining Company or by any copper mining company, while the production of copper has proceeded as usual and the usual mining expenses have kept up, and they have actually less money on hand than on December 15th last.

That at or about the time the present financial depression began the producers of copper fixed the price of copper at seventeen cents per pound; that since that time there has been and now is a
130 persistent contest between the producers of copper and the manufacturers of copper, the manufacturers withholding their orders, attempting to break the price so fixed by the producers.

That at present, so far as known, no price has been settled and agreed upon as a fixed price for copper. The expectation is, in copper circles, that a price will be fixed within the next thirty days. It is believed generally that manufacturers have reached a point where they must have copper, and that a price must be soon agreed to. Upon the fixing of such a price there will be undoubtedly a free and large movement of copper, resulting favorably to copper interests and copper mining stocks.

Deponent further says that as affecting this class of property the financial situation has not substantially improved since December 15th last.

The dividends of copper companies have been and are deferred because of large accumulations of copper unsold. That at Boston, on January 7th and 8th, 1891, deponent was engaged in seeking to ascertain the financial situation, and for the sole purpose of aiding in the raising of money or securing promise of money so as to bid upon the Pewabic mining property on January 24th next; that this was deponent's sole business at Boston, and that he was accompanied there by Johnson Vivian, one of the defendants herein, whose sole business there was to aid in securing promises of money or money sufficient to bid at said sale.

That deponent and said Vivian first ascertained the condition of the Franklin Mining Company and found it to be as hereto-
131 fore stated, large quantities of copper on hand and no money.

That they then sought through friends who have money, and some of whom represent moneyed institutions, to learn if money for such purpose as this could be procured; that they learned, and there was but one opinion or expression from all sources, that while the general money market is somewhat easier than on December 15th last, it is not possible to raise for the purpose of buying this

Pewabic mine a sum near the value of said mine. Men and institutions who ordinarily could be looked to to promote such an enterprise will not now consider such a proposition. Such men and institutions will not entertain such a proposition because, and they so state, of the lack of means available for such a purpose.

Deponent further says that if the price of the copper is soon fixed, so that copper is sold, and if the general financial situation continues to improve, he believes that in a short time capital will seek such an investment as is afforded by the property in this case, and that the property can then be made to bring a price near its true value.

Deponent further says that in his opinion a sale of the property on January 24th next means the sacrifice of the property, and that if the sale is postponed sixty to ninety days it will bring full value.

Deponent further says that he has been connected with copper mining for thirty years, and has frequently had occasion to raise large sums of money for mining purposes, and he is thoroughly familiar with the men and financial institutions from which
132 capital can be obtained for investment in mining property.

SAMUEL L. SMITH.

Subscribed and sworn to before me, at Detroit, Michigan, this 10th day of January, A. D. 1891.

ROBERT YOUNG,
Notary Public, Wayne County, Michigan.

WESTERN DISTRICT OF MICHIGAN, *ss:*

Fred. A. Baker, being duly sworn, deposes and says that on Saturday, the 10th day of January, 1891, *he* served a true copy of the above and foregoing motion, affidavit, and notice on Dickinson, Thurber and Stevenson, solicitors for said complainants, by delivering the same to Mr. Thurber, of said firm, in person, at his office, in the city of Detroit, and on the same day deponent left another copy of the same at the office of Alfred Russell, of Detroit, who is counsel for said complainants.

FRED. A. BAKER.

Subscribed and sworn to before me this 10 day of January, 1891, at Grand Rapids, in said district.

C. L. FITCH,
Clerk U. S. Circuit Court, West. District Mich.

(Endorsed:) U. S. circuit court for the western district of Michigan, northern division. In equity. Thomas F. Mason *et al. vs.* The Pewabic Mining Company *et al.* Motion to postpone sale. Filed Jan. 16th, 1891. C. L. Fitch, clerk. Stone and Gray, F. A. Baker, solicitors for defendants.

133 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, W. HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, ALDEN BUTTRICK, Daniel L. Demmon, Thomas H. Perkins, and The Pewabic Copper Company.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

Thomas F. Mason, being duly sworn, deposes and says that he resides in New York city, N. Y.; that for more than forty years he has been connected with the copper mining industry of Lake Superior; is familiar with the market for copper and with financial affairs, and is now the president of the Quincy Mining Company.

That New York city is the headquarters of the copper market; that the price for Lake copper was reduced to fifteen (15) cents in December last; that at that price manufacturers have been supplied to the extant of their requirements for the months of January and February, and that deliveries are being made regularly.

That he has had no unuaual difficulty in making sales for account of the Quincy Mining Company, and, as a matter of fact, its product is sold up quiet as close as usual at this season of the year.

That from his experience he finds that the financial pressure is over, that the money market is tending to a condition of un-
134 usual ease, and that banking institutions are as ready to-day as at any time to advance money for legitimate enterprises.

THOMAS F. MASON.

Subscribed and sworn to before me this 14th day of January, A. D. 1891, by the said Thomas F. Mason, at New York city, New York, as witness my hand and seal.

CHAS. EDGAR MILLS,
[SEAL.] *Commissioner for Michigan in New York and Notary Public for New York County, in N. Y.*

(Endorsed:) United States circuit court for the western district of Michigan. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Company *et al.* Affidavit of Thomas F. Mason for complain-t-. Filed January 16th, 1891. C. L. Fitch, clerk.

135 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS F. MASON and Others, Complainants,
against
THE PEWABIC MINING COMPANY and Others, Defendants.

UNITED STATES OF AMERICA,
South. District of New York, State of New York, City and County of New York, } *ss:*

Daniel N. Stanton, being duly sworn, says: My business is, and has been for many years, that of a railroad contractor. My office is at No. 52 Broadway, in the city of New York. In the course of my business in the past it has been necessary for me to organize many corporations and to dispose of their securities, and I am thoroughly familiar with the causes that affect the value and saleability of corporate securities. I am at present interested in carrying through various corporate enterprises, and it is therefore necessary for me to keep myself well acquainted with the condition of the money market and all other circumstances which tend to affect investors in purchasing securities or engaging in new enterprises. I further say that in my opinion since the beginning of this year there has been a very marked improvement in public confidence and willingness to invest. It is true that during November and December of last year the threatened suspension of the house of Baring Brothers, combining with other causes, caused a temporary financial stricture in our market; but the manner in which the credit of that house was sustained has gone far to re-establish confidence, and I can
136 say from my own personal experience that since the first of the year capitalists and investors are much easier of approach and much more inclined to become purchasers. I have myself succeeded during this month in making financial arrangements for the carrying of at least one very large mining enterprise, it having been impossible for me to do so during the closing months of last year. In fact, I may say that it is my opinion that the present time is as propitious for the sale of securities or corporate property as we are likely to have for quite a long period of time.

D. N. STANTON.

Sworn to before me this 14th day of January, 1891.
[SEAL] THOMAS ALEXANDER,
U. S. Commissioner, Southern District New York.

(Endorsed:) United States circuit court for the western district of Michigan. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Company *et al.* Affidavit of Daniel N. Stanton for complain-t-. Filed January 16th, 1891. C. L. Fitch, clerk.

137 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, W. HART SMITH, and SULLIVAN BALLOU, Complainants,

vs.

THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, ALDEN BUTTRICK, Daniel L. Demmon, Thomas H. Perkins, and The Pewabic *and* Copper Company.

STATE OF NEW YORK, *City and County of New York,* } *ss:*

William R. Todd, being duly sworn, deposes and says that he resides in Morristown, State of New Jersey; that during the past twenty years he has been the secretary of the Quincy Mining Company, and for more than thirty years has been familiar with the copper mines of the upper peninsula of Michigan; that during his connection with the mines he has resided on the lake and had offices in New York city and Boston, and his business has brought him into intimate relations with many of the most prominent business men of Michigan, New York city, and Boston interested in the Lake Superior copper mines, as well as with the dealers and consumers of copper throughout the country, and he believes the past year has been phenomenally prosperous, and that the condition of the trade is as good as usual at this season, money is becoming abundant and rates for bank accommodations to merchants reasonably low, and payments for all bills are being promptly made
138 for copper as contracted, and seldom have the L. S. copper companies carried a smaller percentage of their product or been in a stronger financial condition than at the present time, and as a matter of fact the Quincy Mining Company (and deponent believes other lake copper companies) have sold copper for January and February in quantities at fifteen cents per pound, the same as the price fixed by Calumet and Hecla Mining Company in December last for their copper.

WM. R. TODD.

Subscribed and sworn to before me this 14th day of January, A. D. 1891, by the said Wm. R. Todd, at New York city, New York, as witness my hand and official seal.

[SEAL.] CHARLES EDGAR MILLS,
Commissioner for Michigan in New York and a Notary Public for New York County, in New York.

(Endorsed:) United States circuit court for the western district of Michigan. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Company *et al.* Affidavit of Wm. R. Todd for complainants. Filed January 16th, 1891. C. L. Fitch, clerk.

139 United States Circuit Court for the Western District of Michigan. In Equity.

THOMAS F. MASON *et al.*
vs.
THE PEWABIC MINING COMPANY *et al.*

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

William Hart Smith, being duly sworn, deposes and says that he resides in the city of New York and is one of the complainants in this action; that during the past thirty years or more he has been connected with the copper mines and mining on Lake Superior and is familiar with the copper market from actual knowledge; that he traverses the affidavit of Samuel L. Smith, of date January the 10th, submitted in this application, and denies that the condition of the copper market is such as stated in said affidavit; that he says of his own knowledge that the price of Lake copper was fixed in December last at 15 cents, and that sales and deliveries have been and are now being made regularly for the current months of January and February at that price.

Further, that the copper market is normal, and that its condition is misrepresented in said affidavit of Samuel L. Smith.

Further, that it is notorious that the money market has recovered from the extreme stringency of November last, that money is now easy, and that the tendency the world over is to extraordinary ease.

Further, that from his own experience he believes that capitalists who would at any time furnish money for such a speculative
140 venture as the purchase of the Pewabic mining property involved in this cause, are as ready now as they ever will be to engage in such an enterprise.

Further, that the complainants own absolutely a majority of the stock of the said Pewabic Mining Company, have deposited the certificates of stock representing such majority interest with the master as a guarantee of their good faith, and for nearly seven years have been persuing this cause in the United States court for sale and equitable settlement against the most persistent and unwarrantable opposition; that they have been damaged seriously by the delays already secured by the defendant, and will be still further damager if from any cause the sale is again postponed.

Further, that deponent is informed and believes that by reason of the delays already secured the mine is becoming more and more dangerous, and the man-engine and boilers are in actual danger of going to pieces for want of proper repairs.

W. HART SMITH.

Subscribed in my presence and sworn to before me this 12th day of January, A. D. 1891, by said William Hart Smith, at New York city, New York, as witness my hand and official seal.

CHARLES EDGAR MILLS, [SEAL.]
[SEAL.] *Notary Public for New York County and a Commissioner for Michigan in New York.*

Endorsed: United States circuit court for the western district of Michigan. In equity. Thomas F. Mason *et al. vs.* The Pewabic Mining Company *et al.* Affidavit of W. Hart Smith for complain-t-. Filed January 16th, 1891. C. L. Fitch, clerk.

141 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS F. MASON, W. HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, ALDEN BUTTRICK, Daniel C. Demmon, Thomas H. Perkins, and The Pewabic Copper Company, Defendants.

Suit pending in said court on the 16th day of January, A. D. 1891, before the Honorable Henry F. Severens, district judge, at chambers, in the city of Grand Rapids, in said district.

The motion of the defendants in this cause to obtain an order postponing the sale of the Pewabic mine, so called, and of the real estate and effects of the Pewabic Mining Company, now advertised to take place on the 24th day of January instant, came on this day to be heard and was argued by counsel for the respective parties, and the premises being fully understood, it is ordered that said motion be, and the same hereby is, denied.

H. F. SEVERENS,
District Judge.

(Endorsed:) The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas F. Mason *et al. vs.* The Pewabic Mining Company *et al.* Order denying motion to postpone sale. Filed January 16th, 1891. C. L. Fitch, clerk.

142 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

To the court:

In persuance and by virtue of the decretal order of this court made in the above-entitled cause, bearing date the 4th day of May, A. D. 1886 (1890), by which it was, among other things, ordered, adjudged, and decreed that all and singular the assets and property

of the said Pewabic Mining Company be sold at public vendue, for cash, to the highest bidder, in one body, after giving the notice of said sale required by law and the practice of this court, and that said property be offered for sale at the front door of the court-house, in the village of Houghton, in the county of Houghton and State of Michigan, by and under my direction, and in persuance of the order of this court made the 25th day of October, A. D. 1890, and in persuance of my report, to which reference is hereby had and made, so far as the same was accepted and confirmed by the court in said last-mentioned order—

143 I, the subscriber, Peter White, special master, do respectfully certify and report that, having been charged by the solicitors for the complainants with the execution of said decretal order, I advertised said premises to be sold by me in one body, at public auction, to the highest bidder, at the front door of the court-house, in the village and county of Houghton and State of Michigan (said court-house being the place for holding the circuit court for said county of Houghton and being within the western district of Michigan, northern division), on the 20th day of December, A. D. 1890, at ten o'clock in the forenoon; that on the said 20th day of December, A. D. 1890, in persuance of the order of said court made and dated on the 15th day of December, A. D. 1890, wherein it was ordered that I should postpone the sale of said property until Saturday, the 24th day of January, A. D. 1891, at the same hour and place, and that I should publish due notice of said adjournments, I, in accordance with said last-named order, duly postponed said sale to the 24th day of January, A. D. 1891, at the same time and place, and caused due notice of said adjournment to be published, as required by said last-mentioned order; that I caused a notice of such sale so to be held as aforesaid on the 20th day of December, A. D. 1890, to be printed once each week for six successive weeks immediately preceding said 20th day of December, A. D. 1890, in the Portage Lake Mining Gazette, a public newspaper printed in said county of Houghton, as appears in the affidavit following and annexed to this report, marked "Exhibit A," which notice contains a description of said property and assets, and that I caused notice of such adjournment to be published for six weeks immediately preceeding the 24th day of January, A. D. 1891, in the said Portage Lake Mining Gazette, as appears in the affidavit following and annexed

144 to this report, marked "Exhibit B."

And I further certify and report that I caused the said notice of sale to be published for six successive weeks prior to the 20th day of December, 1890, and for five successive weekly publications after said 20th day of December, 1890, with added notice of postponement to the 24th day of January, 1891, in each of the following newspapers, viz: The Evening Post, of New York city; The Free Press, of Detroit, Mich.; The Chicago Times, of Chicago, Ill.; The Boston Post, of Boston, Mass., and The Mining Journal, of Marquette, Mich., so that it might be said that the sale had been widely and fully advertised. I had theretofore advertised the said property for sale, in substantially the same form, in all of said papers for

Thursday, the 6th day of November, A. D. 1890, at the same hour and place, for the period of six successive weeks prior to the date last aforesaid, as appears by my report heretofore filed, and had postponed said sale, in accordance with said order of this court made October 25th, 1890, until said 20th day of December, 1890.

And I do further certify and report that on the said 24th day of January, A. D. 1891, the day on which the said premises were so advertised to be sold as aforesaid, I attended at the time and place fixed for said sale and exposed the said premises for sale at public auction to the highest bidder; that immediately after opening said sale I proceeded to read said notice of sale and notice of adjournment thereto appended; that the terms and conditions of such sale were made known by me to the persons attending such sale previous to putting up said property and assets for sale, and I thereupon announced that no bid offered at such sale would be accepted as final or as closing the sale until ten per cent. thereof had been deposited with me, and if such percentage should not be so deposited that I should ignore such bid and proceed with the sale as if it had not been made, taking the next lowest bid as my starting point; that the balance of any bid over the ten per cent. deposit must be payable on the delivery of the deed.

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I thereupon held open sale until the hour of eleven o'clock a. m. of said 24th day of January, A. D. 1891.

I further certify and report that at the hour of eleven o'clock a. m., at the place above specified, I announced that I was ready to receive bids for the purchase of the assets and property of said Pewabic Mining Company; that all of said assets and property, real and personal, including mining rights of the said Pewabic Mining Company's lands described in the annexed notice as leased and any land or lands not in said notice described belonging to the said Pewabic Mining Company, and any other property, real, personal, or mixed, and any other assets of said company not especially described in said notice of sale, of every nature, belonging to or appertaining to said company, were then offered by me to the highest bidder in one body, and I then and there exposed said property and assets as aforesaid for sale, and the said property and assets were then and there struck off to Thomas Henry Mason and William Hart Smith, composing the firm of Mason & Smith, of the city, county, and State of New York, for the sum of seven hundred and ten thousand dollars ($710,000), they being the highest bidders therefor and that being the highest sum bid.

145½

And I do further certify and report that immediately after such bid was made by said Mason and Smith and received by me a deposit of ten per cent. on said sum bidden was paid to me by said Mason and Smith, to wit, the sum of seventy-one thousand dollars ($71,000). Thereupon I declared the sale closed and the said property and assets struck off to said Mason and Smith, they being the highest bidders as aforesaid at such sale of the aforesaid property.

I would report that late in the evening of January 23rd (the evening before the sale was to take place) I received the following tele-

gram, to which I paid no attention whatever, deeming it simply frivolous, viz:

"Dated BOSTON, MASS., *January 23rd*, 1891.

"To Peter White, special master:

"Please postpone sale of Pewabic mine; just found out the sale on our Jewish Sabbath; never notified of sale until to-day. We hold nearly three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers, who will not attend sale on Saturday. Will most cheerfully pay all expenses for postponement; if not, please announce at sale, 'We will protest against this legality.'

"(Signed) ALFRED A. MARCUS."

And on the 26th day of January—that is, the Monday following the sale—I received at Marquette the following telegraphic message, purporting to come from the same person in Boston, and I would add that said person is totally unknown to me, viz:

"Dated BOSTON, MASS., *January 26th*, 1891.

"To Peter White, special master:

"You ignored my dispatch; sold the Pewabic mine. I
146 protest against sale, as you were bound to do all to get the highest price. I claim the right now to bid seven hundred and twenty thousand dollars cash, being twenty thousand dollars more than bid at the illegal sale. I shall claim the mine, being the highest bidder, and protest against any transfer bei-g made to any one except myself, and shall hold you personally responsible.

"(Signed) ALFRED MARCUS."

I have proofs of publication in all the said newspapers, but do not file them with this report, because it seems to me unnecessary to add to its bulk and the cost of copying, but I can at any time file same with a supplemental report.

All of which is respectfully submitted.

Dated Marquette, Mich., February 3rd, A. D. 1891.

PETER WHITE,
Special Master.

Endorsed: Special master's report of sale. Filed Feb. 4th, 1891. F. M. Moore, dep'y clerk.

147 In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

In a cause between—

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU, Complainants,

vs.

THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, & The Pewabic Copper Company, Defendants.

On reading and filing the report of sale made by Special Master

White of the premises, to wit, all the assets and property of the Pewabic Mining Company, in one body, referred to and described in the decree in this cause and in the report of assets and property heretofore filed under said decree by Peter White, special master, and on motion of Dickenson, Thurber & Stevenson, solicitors for complainants, it is ordered that said sale and all things thereto pertaining be and stand conformed unless cause to the contrary be shown within eight days from this date.

FRANCIS M. MOORE,
Deputy Clerk of the Circuit Court of the United States for the Western District of Michigan, Northern Division.

DICKINSON, THURBER & STEVENSON,
Solicitors for Complainants.
THOMAS B. DUNSTAN,
DON M. DICKSON,
ALFRED RUSSELL, *Of Counsel.*

148 To the clerk of said court:

SIR: Please enter the foregoing order.
Yours, &c.,
DICKINSON, THURBER & STEVENSON,
Solicitors for Complainants.

Endorsed: No. 46. The circuit court of the United States for the western district of Michigan, northern division. Thomas H. Mason *et al.*, complainants, *vs.* The Pewabic Mining Co. *et al.*, defendants. Præcipe for entry of order of confirmation of sale. Filed February 7, 1891. F. M. Moore, deputy clerk. Dickinson, Thurber & Stevenson, solicitors for complainants. Thomas B. Dunstan, Don M. Dickson, & Alfred Russell, of counsel.

149 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Chancery.

In a case between—

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, & The Pewabic Copper Company.

STATE OF MICHIGAN, *County of Marquette,* } *ss:*

Thomas B. Dunstan, being duly sworn, says that on the seventh (7) day of February, A. D. 1891, at the city of Marquette, in the county aforesaid, he served a copy of the annexed order, which was duly certified, on each of the parties hereinafter named, to wit, Messrs. Stone & Gray, of Houghton, Michigan; R. C. Ostrander Lansing, Mich.; F. A. Baker, Detroit, Mich.; Richard Montgomery

Lansing, Mich., & Dickinson, Thurber & Stevenson, Detroit, Mich., by enclosing each of said copies in an envelope, directed to each of the above-named parties respectively at their respective residences, as above stated, and paying the legal postage thereon, and by putting the same in the post office at said city of Marquette, Michigan; that deponent is one of the solicitors for the above-named complainants. Further deponent says not.

150

THOMAS B. DUNSTAN.

Subscribed and sworn to before me this 7th day of February, A. D. 1891.

[SEAL.] FRANCIS M. MOORE,
Notary Public.

In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

In a cause between—

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

On reading and filing the report of sale made by Special Master White of the premises, to wit, all the assets and property of the Pewabic Mining Company, in one body, referred to and described in the decree in this cause and in the report of assets and property heretofore filed under said decree by Peter White, special master, and on motion of Dickson, Thurber & Stevenson, solicitors for complainants, it is ordered that said sale and all things thereto pertaining be and stand confirmed, unless cause to the contrary be shown within eight days from this date.

151–157

FRANCIS M. MOORE,
Deputy Clerk of the Circuit Court of the United States for the Western District of Michigan, Northern Division.

DICKINSON, THURBER & STEVENSON,
Solicitors for Complainants.

THOMAS B. DUNSTAN,
DON M. DICKINSON, AND
ALFRED RUSSELL, *Of Counsel.*

Dated February 7th, A. D. 1891.

I hereby certify that the foregoing is a true and correct copy of an order entered at this date.

Witness my hand and the seal of said court the seventh day of February, A. D. 1891.

[SEAL.] FRANCIS M. MOORE,
Deputy Clerk.

Endorsed: 46. Proof of service of copy of order of confirmation of sale by special master. Filed February 7, 1891. F. M. Moore, dep'y clerk.

158 The Circuit Court of the United States for the Western District of Michigan, Northern Division.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING CO., JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Co., Defendants.

The said defendants show to the court the following reasons why the report of Peter White, the special master in said cause, filed February 3, 1891, being his report of the sale of the property of the Pewabic Mining Company, ought not to be confirmed nor should said sale be confirmed:

First. Because said master did not, as he was commanded by the decree of the United States Supreme Court and of this court to do, ascertain the debts and assets of the Pewabic Mining Company and take and state an account between said company and its directors.

Second. Because said master did not before making said sale ascertain what property of the Pewabic Mining Company was to be sold nor ascertain fully what property belonged to the Pewabic Mining Company at the time of said sale.

Third. Because, as appears from the notice of sale published by said master and from said report, said master offered to sell,
159 and reports having sold, "all of said assets and property, real and personal, including mining rights of the said Pewabic Mining Company's lands described in the annexed notice as leased, and any land or lands not in said notice described belonging to the said Pewabic Mining Company, and any other property, real, personal, or mixed, and any other assets of said company not especially described in said notice of sale, of every nature, belonging to or appertaining to said company," when the fact is well known that it is claimed on the part of complainants that an accounting with the directors of said Pewabic Mining Company will show a large sum due to said company from said directors, a part of the assets of said company, the amount of which sum, if any shall be found to be due, is entirely unknown and undetermined and concerning which bidders were not and could not be informed, or if any were informed thereof and others were not, an unfair advantage might be obtained out of such information and the manner in which such sale was conducted.

Fourth. Because the report of sale of the master, as worded, includes and states that he offered for sale and sold all assets of the Pewabic Mining Company and all of its property of every nature, which would include rights of action and claims the amounts of which are determined as well as undetermined.

Fifth. Because it is impossible to tell what was sold and what was purchased at saidsale.

All of the foregoing defendants urge as cause why said sale and the report thereof ought not to be confirmed.

STONE & GRAY,
Solicitors for Defendants.

160 Endorsed: 46. U. S. circuit —, west. dist., north. div. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Cause why sale and report of master should not be confirmed. Filed Feb'y 13, 1891. F. M. Moore, dep. clerk.

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

Now comes the said defendants, The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, and Daniel L. Demmon, and except and object to the report of the sale of the special master, bearing date February 3rd, 1891, for the following reasons:

1. That the said sale mentioned in said report was made before the deb-s and the assets of said defendants, The Pewabic Mining Company, were ascertained, as provided for and required in the decree entered in said cause.

2. That although no accounting has been had or taken in said cause and although the assets and debts of the said Pewabic
161 Mining Company have not been ascertained, yet the special master sold, beside the real estate described in the notice of sale, "and any other property, real, personal, or mixed, and any other assets of said company not especially described in said notice of sale, of every nature, belonging to or appertaining to said company."

3. Because, as appears by said report, said special master attempted to sell more property than he was authorized to sell or could sell under the decree in the present condition of said cause.

4. That said report is indefinite and does not state with precision just what property was sold by said special master at said sale.

5. Because said property was sold for an inadequate price or sum and for much less than it is worth.

And for the reasons above stated these defendants ask that such sale may be set aside and the said property reoffered for sale, as provided for in the decree in said cause.

Dated Feb'y 13, 1891.

STONE & GRAY,
Solicitors for said Defendants.

Endorsed: 46. U. S. district court, western dist. of Mich., northern division. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Co. *et al.* Exceptions to special master's report of sale. Filed Feb'y 13, 1891. F. M. Moore, dep't. clerk. Stone & Gray, sol'rs for def'ts.

162 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

To Messrs. Stone & Gray, Houghton, Michigan, solicitors for the above-named defendants:

Please to take notice that the exceptions filed herein on the 13th instant to the special master's report of sale of the property and assets of the said Pewabic Mining Company will be brought on for argument before Hon. Henry F. Severans, district judge of said district, at his rooms, in the United States court-house, in the city of Grand Rapids, Michigan, on Saturday, the 21st day of February, A. D. 1891, at 10 o'clock a. m.

Dated February 16th, A. D. 1891.

Yours, &c.,

DICKINSON, THURBER & STEVENSON,
Solicitors for Complainants.

T. B. DUNSTAN, *Of Counsel.*

163 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

STATE OF MICHIGAN, *County of Houghton,* } *ss:*

Thomas B. Dunstan, of said county, being by me duly sworn, doth depose and say that on the 16th day of February, A. D. 1891, he served upon Stone & Gray, the solicitors mentioned in the annexed notice, a notice of which the annexed is a true copy, at their office, in the village of Houghton, in said county, by delivering such notice to John W. Stone, one of said firm of Stone & Gray, personally.

THOMAS B. DUNSTAN.

Subscribed and sworn to before me this 16th day of February, A. D. 1891.

ALLEN F. REES,
Notary Public.

Endorsed: 46. The circuit court of the United States for the western district of Michigan, notheren division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Proof of service. Filed Feb. 27, 1891. C. L. Fitch, clerk.

164 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Aldin B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

Suit pending in said court this 2nd day of March, A. D. 1891, at chambers.

In this cause a common order for the confirmation of the special master's report of sale of all the assets and property of the defendant The Pewabic Mining Company having heretofore been duly entered and proof of service thereof filed, and afterwards all the defendants having filed objections and exceptions to said report of sale, which have been fully argued by counsel of the respective parties, and no motion having been made or served to open the biddings, it is ordered that the objections and exceptions to said report be, and the same are hereby, overruled, and that said report of sale be, and the same is hereby, in all respects confirmed, provided, however, that nothing herein contained or in said sale shall be considered as passing to the purchasers the claim or claims, if any, against the former directors and defendants in this cause for any sum or sums found to be due from them on the accounting against them directed by the decree in this cause.

H. F. SEVERENS,
Dist. Judge.

165 Circuit Court of the United States, Western District of Michigan. In Equity.

MASON *et al.*
vs.
PEWABIC MINING COMPANY *et als.*

Petition of Alfred A. Marcus for Leave to Intervene.

And now comes Alfred A. Marcus, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, and says that -e is the owner of 3,017 shares of the capital stock of the Pewabic Mining

Company; that he, for himself and other parties whose names he is willing to disclose, was desirous and fully intended to be present or represented at the sale of the property of the said Pewabic Mining Company by the special master duly appointed by this honorable court in the above-entitled cause; that he was ready to and would have bid at said sale and paid a large amount of money for the property of said company advertised for sale by said special master; that on January 23, 1891, that being the day before the sale of said property took place, your petitioner discovered for the first time that the said sale was advertised for Saturday, January 24th; that thereupon and immediately your petitioner, using all haste and despatch possible, sent by telegraph a message to the said special master, a copy whereof is hereto annexed, marked A, asking to have the sale of said property postponed, at his own expense, for the reason that he was never notified of the sale until said date, and that said sale was advertised to take place on the seventh day of the week, which is the Sabbath of your petitioner, and upon which day he
166 is forbidden by his creed to do any business.

That the special master received the message of your petitioner, but ignored it and sold said property for an inadequate sum and for much less than it was worth; that on January 26th, 1891, your petitioner sent by telegraph a message, a copy whereof is hereto annexed, marked B, to said special master, claiming the right to bid $721,000 for the property sold at said sale, which message was duly received by said special master; that the said special master in his report of said sale, dated February 3, 1891, acknowledge- the receipt of the above-mentioned telegraph messages from your petitioner, but said he paid no attention whatever to them, deeming them frivilous.

And your petitioner further says that his said offer in his said telegram of January 26 was *bona fide*, and that he was on said date and is now able and desirous of taking the said property at the price named in his said offer, and that he was the highest bidder for said property advertised, and as such is, in accordance with the decree of the court, entitled to have his bid accepted and to receive the said property upon payment of the said sum bid within a reasonable time.

And your petitioner further says that he is willing and hereby offers to give bonds, with satisfactory sureties, to perform in accordance with this his petition.

Wherefore your petitioners pray-:

1. That he may be allowed to intervene in said cause and object to the report of sale of the special master bearing date February 3, 1891.

167 2. That the said sale of the property of the Pewabic Mining Company made on January 24th, 1891, be declared void and set aside and the special master be ordered to convey to the petitioner, as highest bidder, said property upon his paying within a reasonable time the said sum of $721,000.

ALFRED A MARCUS.

UNITED STATES OF AMERICA, } ss:
Massachusetts District, }

BOSTON, *February* 26, 1891.

Personally appeared Alfred A. Marcus, the foregoing petitioner, and made oath that he has read the foregoing petition, and that the same is true except as to those matters therein stated upon his information and belief, and that as to those matters he believes it to be true.

Before me—

[SEAL.] JOHN G. STETSON,
Commissioner.

Endorsed: No. 46. In equity. Mason *et als. vs.* Pewabic Mining Co. *et als.* Petition of Alfred A. Marcus to intervene. Filed March 3, 1891. F. M. Moore, dept. clerk. 4 p. m.

168 EXHIBIT A.

BOSTON, MASS., *Jwnuary* 23, 1891.

To Peter White, special master:

Please postpone sale of Pewabic mine; just found out the sale on our Jewish Sabbath; never notified of sale until to-day. We hold nearny three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers who will not attend sale on Saturday; will most cheerfully pay all expenses for postponement; if not, please announce at sale "we will protest against this legality."

(Signed) ALFRED A. MARCUS.

EXHIBIT B.

BOSTON, MASS., *January 26th*, 1891.

To Peter White, special master:

You ignored my despatch; sold the Pewabic mine. I protest against sale, as you were bound to do all to get the highest price. I claim the right now to bid seven hundred twenty-one thousand dollars cash, being twenty thousand dollars more than bid at the illegal sale. I shall claim the mine, being the highest bidder, and protest against any transfer being made to any one except myself, and shall hold you personally responsible.

(Signed) ALFRED A. MARCUS.

169 Endorsed: 46. U. S. circuit court, west. dist., N. div. In equity. Thomas H. Mason *et als. vs.* The Pewabic Mining Company *et als.* Order overruling objections to report of sale. Filed March 3, 1891. C. L. Fitch, clerk.

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

And now come the said defendants, The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, and Daniel L. Demmon, and hereby claim the benefit of an appeal to the Supreme Court of the United States from the order made in said cause by said court on the second day of March, 1891, confirming the sale made by the special master on the 24th day of January, 1891, and from the special master's report of said sale.

Dated the 9th day of March, A. D. 1891.

STONE & GRAY,
Solicitors for said Defendants.
RUSSELL C. OSTRANDER, *Of Counsel.*

To Charles L. Fitch, Esq., clerk of said court.

170 Endorsed: 46. U. S. cir. court, west. dist. of Mich., N. div. In equity. Thomas H. Mason *et als. vs.* The Pewabic Mining Co. *et als.* Claim of appeal. Filed March 10th, 1891. F. M. Moore, dept. clerk. Stone & Gray, sol'rs for def't.

Circuit Court of the United States, Western District of Michigan. In Equity.

MASON *et al.*
vs.
PEWABIC MINING COMPANY *et als.*

Petition of Alfred A. Marcus for Leave to Intervene.

And now comes Alfred A. Marcus, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, and says that he is the owner of 3,000 shares of the capital stock of the Pewabic Mining Company; that he, for himself and other parties, whose names he is willing to disclose, was desirous and fully intended to be present or represented at the sale of the property of the said Pewabic
171 Mining Company by the special master duly appointed by this honorable court in the above-entitled cause; that he was ready to and would have bid at said sale and paid a large amount of money for the property of said company advertised for sale by said special master.

That on January 23, 1891, that being the day before the sale of said property took place, your petitioner discovered for the first time that the sale was advertised for Saturday, January 24th; that thereupon and immediately your petitioner, using all haste and despatch

possible, sent by telegraph a message to the said special master, a copy whereof is hereto annexed, marked A, asking to have the sale of said property postponed, at his own expense, for the reason that he was never notified of the sale until said date, and that said sale was advertised to take place on the seventh day of the week, which is the Sabbath of your petitioner, and upon which day he is forbidden by his creed to do any business.

That the special master received the message of your petitioner, but ignored it and sold said property for an inadequate sum and for much less than it was worth. Then, on January 26th, 1891, your petitioner sent by telegraph a message, a copy of which is hereto annexed, marked B, to said special master, claiming the right to bid $721,000 for the property sold at said sale, which message was duly received by said special master; that the said special master in his report of said sale, dated Feb. 3, 1891, acknowledged the receipt of the above-mentioned telegraph message- from your petitioner, but said he paid no attention whatever to them, deeming them frivolous.

172 And your petitioner further says that his said offer in his said telegram of January 26, was *bona fide*, and that he was on said date and is now able and desirous of taking the said property at the price named in his said offer.

And your petitioner says that he is in equity entitled to have said sale set aside and declared null and void, and to have a resale of said property in manner decreed by this honorable court; and your petitioner says that he is willing and ready to pay all expenses incident to such resale of said property; that he will bid at such sale, as a starting bid, a sum not less than $800,000; and your petitioner hereby offers to give a bond, with satisfactory sureties, in a sum to be fixed by this honorable court, as security for his good faith and ability to carry out his said offer to bid $800,000 at said sale.

Wherefore your petitioner prays:

1. That he may be allowed to intervene in said cause and object to the report of the sale of the special master in said cause, said report bearing date of February 3, 1891.

2. That said sale of the property of the Pewabic Mining Company, made on January 24, 1891, be declared null and void and be set aside by this honorable court.

3. That said special master be ordered to offer said property for sale, in the manner decreed by this honorable court, at the expense of your petitioner.

ALFRED A. MARCUS.
C. E. HELLIER,
Of Counsel for Petitioner.

173 Personally appeared the above-signed Alfred A. Marcus and made oath in due form to the truth of the statement by him signed before me—

[SEAL.]

HENRY L. HALLETT,
U. S. Commissioner, Mass. Dist.

Endorsed: 46. The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Petition of Alfred A. Marcus for leave to intervene. Filed Mar. 11, 1891. C. L. Fitch, clerk.

174 EXHIBIT A.

BOSTON, MASS., *January* 23, 1891.

To Peter White, special master:

Please postpone sale of Pewabic mine; just found out the sale on our Jewish Sabbath; never notified of sale until to-day. We hold nearly three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers who will not attend the sale on Saturday; will most cheerfully pay all expenses for postponement; if not, please announce at sale "we will protest against this legality."

(Signed) ALFRED A. MARCUS.

EXHIBIT B.

BOSTON, MASS., *January 26th*, 1891.

To Peter White, special master:

You ignored my despatch; sold the Pewabic mine. I protest against sale, as you were bound to do all to get the highest price. I claim the right now to bid seven hundred and twenty-one thousand dollars cash, being twenty thousand dollars more than bid at the illegal sale. I shall claim the mine, being the highest bidder, and protest against any transfer being made to any one except myself, and shall hold you personally responsible.

(Signed) ALFRED A. MARCUS.

175 The Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

Suit pending in said court, in said district, on the 11 day of March, A. D. 1891.

Present: Hon. Henry F. Severens, district judge, at chambers.

On reading the petition of Alfred A. Marcus, filed in the above-entitled cause, ordered that the parties to said suit, complainants and defendants, and the purchaser at the master's sale, show cause

to said court, on Tuesday, March 24th inst., at the opening of court on that day, why the prayer said petitioner should not be granted.

Further ordered that a copy of said petition and a copy of this order be served upon the solicitors for the respective parties and upon said purchasers on or before March 17, 1891.

H. F. SEVERENS,
Dist. Judge.

Endorsed: 46. The circuit court of the United States for the western district of Michigan, northern division, in equity. Thomas H. Mason *et als. vs.* Pewabic Mining Co. *et als.* Order to show cause. Filed Mar. 13, 1891. C. L. Fitch, clerk.

176 Circuit Court of the United States, Western District of Michigan. In Equity.

MASON *et al.*
against
PEWABIC MINING CO. *et al.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Horace C. Foote, residing at No. 53 West 82nd street, in the said city of New York, being duly sworn, says that he is more than twenty-one years of age, and that at the instance and request of Messrs. Cahill and Ostrander, solicitors for the petitioner in the annexed petition, he did, on the 16th day of March, A. D. 1891, at No. 52 Broadway, in the said city of New York, the place of business of Thomas H. Mason and William Hart Smith, serve the annexed notice, petition, and order personally on the above-named Thomas H. Mason and William Hart Smith, complainants herein, respectively, by delivering copies of the said notice, petition, and order to each of them personally and leaving the same with each of them; and deponent further says that he knows the said persons so served to be respectively the persons of the said names mentioned and described in said notice, petition, and order as complainants therein.

HORACE C. FOOTE.

Sworn to before me this 16th day of March, 1891.
[SEAL.] JAMES R. SHEFFIELD,
Notary Public, New York County.

177 Circuit Court of the United States, Western District of Michigan. In Equity.

MASON *et al.*
vs.
PEWABIC MINING COMPANY *et als.*

You will please take notice that the annexed are copies of the

petition filed on March 12 inst. in the above-entitled cause and of the order made March 13 inst. on said petition.

March 14, 1891.

Yours, &c.,

CAHILL & OSTRANDER,
Solicitors for Petitioner.
CHAS. E. HELLIER,
Of Counsel.

To Dickinson, Thurber & Stevenson, sol's't'rs for complainants; F. A. Baker, sol'r for Pewabic Min. Co.; Stone & Gray, sol'r- for defendants Thomas H. Mason & William Hart Smith.

The Circuit Court of the United States for the Sixth Circuit, West-rn District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN HENRY BILLings, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

Suit pending in said court, in said district, on the 11 day of March A. D. 1891.

Present: Hon. Henry F. Severens, district judge, at chambers.

178 On reading the petition of Alfred A. Marcus, filed in the above-entitled cause, ordered that the parties to said suit, complainants and defendants, and the purchasers at the mast-r's sale show cause to said court, on Tuesday, March 24 inst., at the opening of the court on that day, why the prayer of the petitioner should not be granted. Further ordered that a copy of said petition and a copy of this order be served upon the solicitors for the respective parties and upon said purchasers on or before March 17, 1891.

H. F. SEVERENS,
Dist. Judge.

THE UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division,* } *ss:*

I, Charles L. Fitch, clerk of the circuit court of the United States for the western district of Michigan, do hereby certify that the foregoing is a true, compared copy of the order to show cause, filed March 13, 1891, in the proceedings of said court in said entitled cause and of the whole thereof.

Witness my official signature and the seal of said court, at Grand Rapids, this 13th day of March, in the year of our Lord one thousand eight hundred and ninety-one.

[SEAL.] CHARLES L. FITCH, *Clerk.*

Circuit Court of the United States, Western District of Michigan.
In Equity.

MASON *et al.*
vs.
PEWABIC MINING CO. *et als.*

Petition of Alfred A. Marcus for Leave to Intervene.

And now comes Alfred A. Marcus, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, and says that
179 he is the owner of 3,000 shares of the capital stock of the Pewabic Mining Company; that he, for himself and other parties, whose name he is willing to disclose, was desirous and fully intended to be present or represented at the sale of the property of the said Pewabic Mining Company by the special master duly appointed by this honorable court in the above-entitled cause; that he was ready to and would have bid at said sale and paid a large amount of money for the property of said company advertised for sale by said special master; that on January 23, 1891, that being the day before the sale of said property took place, your petitioner discovered for the first time that the said sale was advertised for Saturday, January 24; that thereupon and immediately your petitioner, using all haste and despatch possible, sent by telegraph a message to said special master, a copy whereof is hereto annexed, marked "A," asking to have the sale of said property postponed at his own expense, for the reason that he was never notified of the sale until said date, and that said sale was advertised to take place on the seventh day of the week, which is the Sabbath of your petitioner, and upon which day he is forbidden by his creed to do any business; that the special master received the message of your petitioner, but ignored it, and sold such property for an inadequate sum and for much less than it was worth. Then, on January 26, 1891, your petitioner sent by telegraph a message, a copy whereof is hereannexed, marked "B," to said special master, claiming the right to bid $721,000 for the property sold at the sale, which special message
180 was duly received by said special master; that the said special master, in his report of said sale, dated Feb. 3, 1891, acknowledged the receipt of the above-mentioned telegraph message from your petitioner, but said that he paid no attention whatever to them, deeming them frivilous; and your petitioner further says that his said offer in his said telegram of January 26 was *bona fide*, and that he was on said date and is now able and desirous of taking said property at the price named in his said offer; and your petitioner says that he is in equity entitled to have said sale set aside and declared null and void and to have a resale of said property in manner decreed by this honorable court; and your petitioner says that he is ready and willing to pay all expenses incident to such resale of said property; that he will bid at such sale, as a starting bid, a sum not less than $800,000, and your petitioner hereby offers to give a bond, with satisfactory sureties, in a sum to

be fixed by this honorable court, as security for his good faith and ability to carry out his said offer to bid $800,000 at said sale.

Wherefore your petitioner prays:

1. That he may be allowed to intervene in said cause and object to the report of sale of the special master in said cause, said report bearing date of February 3, 1891.

2. That the sale of the property of the Pewabic Mining Company made January 24, 1891, be declared null and void and be set aside by this honorable court.

3. That said special master be ordered to offer said property for sale, in the manner decreed by this honorable court, at the expense of your petitioner.

181 ALFRED A. MARCUS.

C. E. HELLIER,
Of Counsel for Petitioner.

Personally appeared the above-signed Alfred A. Marcus and made oath in due form to the truth of the statement by him signed.

Before me—

HENRY L. HALLET,
U. S. Commissioner, Mass. Dist.

EXHIBIT A.

BOSTON, MASS., *Jan.* 23, 1891.

To Peter White, special master:

Please postpone sale of Pewabic mine; just found out the sale on our Jewish Sabbath; never notified of sale until to-day. We hold nearly three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers who will not attend the sale on Saturday; will most cheerfully pay all expense for postponement; if not, please announce at sale "we will protest against this legality."

(Signed) ALFRED A. MARCUS.

EXHIBIT B.

BOSTON, MASS., *Jan.* 26, 1891.

To Peter White, special master:

You ignored my despatch; sold the Pewabic mine. I protest against sale, as you were bound to do all to get the highest price.

I claim the right to bid seven hundred and twenty-one thou-
182 sand dollars cash, being twenty thousand dollars — than bid at the illegal sale. I shall claim the mine, being the highest bidder, and protest against any transfer being made to any one except myself, and shall hold you personally responsible.

(Signed) ALFRED A. MARCUS.

Endorsed: 46. The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Proof of service. Filed Apr. 27, 1891. C. L. Fitch, clerk.

183 Circuit Court of the United States, Western District of Michigan. In Equity.

MASON *et al.*
vs.
PEWABIC MINING CO. *et als.*

You will please take notice that the annexed are copies of the petition filed on March 12th inst. in the above-entitled cause and of the order made March 13 inst. on said petition.

March 14, 1891.

Yours, &c., CAHILL & OSTRANDER,
Solicitors for Petitioner.

To F. A. Baker, sol'r for Pewabic Min. Co.; Stone & Gray, sol'r for defendants; Dickenson, Thurber & Stevenson, sol'r- for compl'ts Thomas H. Mason & William Hart Smith.

The Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

184 Suit pending in said court, in said district, on the 11 day of March, A. D. 1891.

Present: Hon. Henrey F. Severens, district judge, at chambers.

On reading the petition of Alfred A. Marcus, filed in the above-entitled cause, ordered that the parties to said suit, complainants and defendants, and the purchasers at the master's sale show to said court, on Tuesday, March 24 inst., at the opening of the court on that day, why the prayer of said petitioner should not be granted. Further ordered that a copy of said petition and a copy of this order be served upon the solicitors for the respective parties and upon said purchasers on or before Mrach 17, 1891.

H. F. SEVERENS,
District Judge, Southern Division.

THE UNITED STATES OF AMERICA, *Western District of Michigan*, } *ss*:

I, Charles L. Fitch, clerk of the circuit court of the United States for the western district of Michigan, do hereby certify that the foregoing is a true, compared copy of the order to show cause filed March 13, 1891, in the proceedings of said court in said entitled cause and of the whole thereof.

Witness my official signature and the seal of said court, at Grand

Rapids, this 13th day of March, in the year of our Lord one thousand eight hundred a-d ninety-one.

[SEAL.] CHARLES L. FITCH, *Clerk.*

Circuit Court of the United States, Western District of Michigan.
In Equity.

MASON *et al.*
vs.
PEWABIC MINING COMPANY *et als.*

185 *Petition of Alfred A. Marcus for Leave to Intervene.*

And now comes Alfred A. Marcus, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, and says that he is the owner of three thousand shares of the capital stock of the Pewabic Mining Company; that he, for himself and other parties, whose names he is willing to disclose, was desirous and fully intended to be present or represented at the sale of the property of the said Pewabic Mining Company by the special master *b*uly appointed by this honorable court in the above-entitled cause; that he was ready to and would have bid at said sale and paid a large amount of money for the property of the said company advertised for sale by said special master; that on January 23, 1891, that being the day before the sale of said property took place, your petitioner discovered for the first time that the said sale was advertised for Saturday, January 24th; that thereupon and immediately your petitioner, using all hast- and despatch possible, sent by telegraph a message to said special master, a copy whereof is hereto annexed, marked "A," asking to have the sale of said property postponed, at his own expense, for the reason that he was never notified of the sale until said date, and that said sale was advertised to take place on the seventh day of the week, which is the Sa-bath of your petitioner, and upon which day he is forbidden by his creed to do any business.

That the special master received the message of your petitioner, but ignored it, and sold said property for an inadequate sum
186 and for much less than it was worth. Then, on January 26th, 1891, your petitioner sent by telegraph a message, a copy whereof is hereto annexed, marked B, to said special master, claiming the right to bid $721,000 for the property sold at sais sale, which message was duly received by said special master; that the said special master in his report of said sale, dated Feb. 3, 1891, acknowledged the receipt of the above-mentioned telegraph messages from your petitioner, but said he paid no attention whatever to them, deeming them frivilous.

And your petitioner further says that his sais offer in his said telegram of January 26 was *bona fide*, and that he was on said date and is now able and desirous of taking the said property at the price named in his said offer.

And your petitioner says that he is in equity entitled to have said sale set aside an- declared null and void, and to have a resale of

said property in manner decreed by this honorable court; and your petitioner says that he is willing and ready to pay all expenses incident to such resale of said property; that he will bid at such sale, as a starting bid, a sum not less than $800,000; and your petitioner hereby offers to give a bond, with satisfactory sureties, in a sum to be fixed by this honorable court, as security for his good faith and ability to carry out his said offer to bid $800,000 at said sale.

Wherefore your petitioner prays:

187 1. That he may be allowed to intervene in said cause and object to the report of sale of the special master in said cause, said report bearing date of February 3, 1891.

2. That said sale of the property of the Pewabic Mining Company made on January 24, 1891, be declared null and void and be set aside by this honorable court.

3. That said special master be ordered to offer said property for sale, in the manner decreed by this honorable court, at the expense of your petitioner.

ALFRED A. MARCUS.

C. E. HELLIER,
Of Counsel for Petitioner.

Personally appeared the above-named Alfred A. Marcus and made oath in due form to the truth of the statement by him signed.

Before me—

HENRY L. HALLETT,
U. S. Commissioner, Mass. Dist.

[Seal Henry L. Hallett, U. S. Commissioner, District of Massachusetts.]

EXHIBIT A.

BOSTON, MASS., *January* 23, 1891.

To Peter White, special master:

Please postpone sale of Pewabic mine; just found out the sale on our Jewish Sabbath; never notified of sale until to-day. We hold nearly three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers who will not attend the sale on Saturday; will most cheerfully pay all expenses for postponement; if not, please announce at sale "we will protest against this legality."

(Signed) ALFRED A. MARCUS.

188 EXHIBIT B.

BOSTON, MASS., *January* 26, 1891.

To Peter White, special master:

You ignored my despatch; sold the Pewabic mine. I protest against sale, as you were bound to do all to get the highest price. I claim the right now to bid seven hundred and twenty-one thousand dollars cash, being twenty thousand dollars more than bid at

the illegal sale. I shall claim the mine, being the highest bidder, and protest against any transfer being made to any one except myself, and shall hold you personally responsible.

(Signed) ALFRED A. MARCUS.

DETROIT, MICH., 3, 14, '91.

I admit due personal service of a copy of the within this 14th day of March, A. D. 1891.

F. A. BAKER, *Sol's'r for Pewabic Min. Co.*
DICKINSON, THURBER & STEVENSON,
Sol'r- for Complainants & Purchasers.
STONE & GRAY, *Sol'rs for Def'ts.*

Filed Apr. 27, 1891.

C. L. FITCH, *Clerk.*

Endorsed: 46. The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et als. vs.* Pewabic Mining Co. *et al.* Proof of service. Filed Apr. 27, 1891. C. L. Fitch, clerk.

189 Circuit Court of the United States, Western District of Michigan. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

Amendment to Petition of Alfred A. Marcus for Leave to Intervene in the Above-Entitled Action.

Now comes Alfred A. Marcus, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, and moves to amend his petition for a resale of the property of the Pewabic Mining Company, sold by the special master in the above-entitled action on January 24, 1891, by inserting after t-e paragraph in his said petition which reads as follows: "And your petitioner further says that his said offer in his said telegram of January 26 was *bona fide*, and that he was on said date and is now able and desirous of taking the said property at the price named in said offer," the following:

And your petitioner further says that at the sale of said property Thomas H. Mason and William Hart Smith, the plaintiffs in this case, bid on said property, and that said property was declared to have been sold to them as the highest bidders therefor; that said

190 Thomas H. Mason and William Hart Smith had not obtained permission from this court to bid at the said sale; that said Thomas H. Mason and William Hart Smith had no right to bid at said sale; that the special master had no right to receive

their said bid, and that the alleged sale to said Thomas H. Mason and William Hart Smith was illegal and void.

ALFRED A. MARCUS.

UNITED STATES OF AMERICA, *District of Massachusetts*, } ss:

APRIL 15, 1891.

Subscribed and sworn to before me.

[SEAL.] JOHN G. STETSON,
Commissioner U. S. Circuit Court, Mass. District.

Endorsed: 46. U. S. circuit court, western divi-ion of Michigan. Mason *et al. vs.* Pewabic Mining Company *et al.* Amendment to petition of Alfred A. Marcus. Filed Apr. 20, 1891. C. L. Fitch, clerk. Robert M. Morse, Jr., Russell C. Ostrander, Charles E. Hellier, for petitioner.

191 DETROIT, MICH., *Apr.* 22, 1891.

Mr. Russell C. Ostrander, Lansing, Mich.

DEAR SIR: Served Marcus amendment on Dickinson, Thurber & Stevenson this morning; also served them with the within motion; did not serve motion to recall bid or give any notice of approval of appeal bond; will bring it up, however, before judge at that time to perfect old appeal & preliminary to a new appeal.

Yours, &c., F. A. BAKER.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU *vs.* THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, THOMAS H. PERKINS, ALDEN B. BUTTRICK, DANIEL L. DEMMON, and THE PEWABIC COPPER COMPANY.

To Messrs. Dickinson, Thurber & Stevenson, solicitors for complainants and for purchasers at sale.

GENTS: You will please take notice that on Monday, the 27th day of April, 1891, at the opening of court, before the Honorable H. F. Severens, district judge, at the court-room, in the Federal building, in Grand Rapids, the above-named defendant, The Pewabic Mining Company, by F. A. Baker, its solicitor, will move the court
192 to vacate and set aside the sale of the mining property of said defendant made by Peter White, special master, as appears by his report of sale of record in this cause, and to order a resale of said property by said special master, for the following reasons:

1st. The court having entertained and made an order to show cause upon the petition of Alfred A. Marcus to intervene in this cause and for a resale, the said sale so made and reported by the

special master has not been finally confirmed and the question whether it shall be finally confirmed is still open.

2nd. It appears from the petition of said Alfred A. Marcus that said property did not bring the highest price for which it can be sold within $90,000 and upwards, and that if said property is resold it will bring not less than $800,000.

3rd. It appears by said report of sale that Thomas H. Mason and William Hart Smith, two of the complainants in this cause, were permitted, without permission of the court, to bid on said property and become the purchasers thereof, and the sale to them is illegal and void.

4th. It appears by the files and records of this case that said sale was prematurely made, before the debts and assets of the Pewabic Mining Company had been fully ascertained and determined, and before there had been any accounting with the defendant directors, as required by the decision and mandate of the Supreme Court of the United States.

193 Said motion will be based upon the files and records in this cause and the petition of said Alfred A. Marcus and the affidavits and proofs filed in support thereof.

Detroit, April 22, 1891.

F. A. BAKER,
Solicitor for Pewabic Mining Co.

Endorsed: 46. United States of America. Circuit court U. S., W. dist. Mich., N. div. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Motion to set aside sale. Filed Apr. 27, 1891. C. L. Fitch, clerk. F. A. Baker, sol'r Pewabic Mining Co.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

I, Francis V. Parker, of Boston, in said county, on oath say that I have subscribed my name to a letter, dated April 1, 1891, to R. M. Morse, Jr., in reference to the purchase of the property *of the property* of the Pewabic Mining Company; that I am a stockholder and am worth above all my liabilities at least $150,000, and am able to respond and will respond to any obligation which may be incurred by me on account of said purchase, and that I will furnish the sum of 112,500 thousand dollars towards the sum of $900,000, which I hereby agree may be paid at a resale of said property.

FRANCIS V. PARKER.

194 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

BOSTON, *April* 26, 1891.

Then personally appeared Francis V. Brown, to me personally known, and made oath that the above statement by him subscribed is true.

Before me—

[SEAL.]

FRED. W. BROWN,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS:

OFFICE OF THE SECRETARY, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Fred. W. Brown was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted, with jurisdiction and the right to act in any and all the counties; that as such notary public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court, and that I believe the signature to the annexed attestation to be genuine.

In testimony whereof I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus for leave to intervene. Affidavit of Francis V. Parker. Filed Apr. 27, 1891. C. L. Fitch, clerk.

195 BOSTON, *April* 1, 1891.

R. M. Morse, Esq., counsel, Boston, Mass.

DEAR SIR: We herewith agree that in case a resale of the property of the Pewabic Mining Company (so called) is ordered by the court we will give for said property the sum of $800,000, and as an earnes- thereof pay into court $80,000, as an advance of 10 per cent. over and above the amount bid and as a fund to cover the expense of the resale; and we further agree to go as sureties upon a bond that a starting bid of eight hundred thousand dollars shall be made, or will furnish a bond satisfactory to the court.

IRVING A. EVANS.
CHARLES A. PRINCE.
J. O. WETHERBEE.
DAN'L L. DEMMON.
E. E. PRATT.
F. V. PARKER.

Endorsed: 46. The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al. vs* Pewabic Mining Co. *et als.* Letter to R. M. Morse. Filed Apr. 27, 1891. C. L. Fitch, clerk.

196 New York and New England Railroad Company; office of general counsel, Charles Albert Prince, 40 State street.

BOSTON, *April 9th*, 1891.

Robert M. Morse, Jr., Esq.

DEAR SIR: I am prepared for myself and associates, upon telegraphic advice from you that the Pewabic sale is reopened, to wire

the sum of ninety thousand dollars as an earnes- of our intention to bid the sum of nine hundred thousand dollars at the proposed sale.

Very truly yours, CHARLES A. PRINCE.

Enclosed in an envelope addressed: R. M. Morse, Jr., Esq., Boston, Mass.

Envelope endorsed: 46. The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Filed Apr. 27, 1891. C. L. Fitch, clerk.

197 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

I, Irving A. Evans, of Boston, in said county, on oath say that I have subscribed my name to a letter, dated April 1, 1891, to R. M. Morse, Jr., in reference to the purchase of the property of the Pewabic Mining Company; that I am the senior member of the firm of Irving A. Evans & Company, of Boston, stock brokers, and am to respond and will respond to any obligation which may be incurred by me on account of said purchase, and that I will furnish the sum of $112,500 *dollars* towards the sum of $900,000, which I hereby agree may be paid at a resale of said property.

IRVING A. EVANS.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

BOSTON, *April 6th*, 1891.

Then personally appeared Irving A. Evans, to me personally known, and made oath that the above statement by him subscribed *by him* is true.

Before me—

[SEAL.] FRED. W. BROWN,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS:

OFFICE OF THE SECRETARY, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Fred. W. Brown was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted, with jurisdiction and the right to act in any and all the counties; that as such notary public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments; that to his acts and attestations as such full faith and credit are and
198 ought to be given in and out of court, and that I believe the signature to the annexed attestation to be genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus for leave to intervene. Affidavit of Irving A. Evans. Filed Apr. 27, 1891. C. L. Fitch, clerk.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

I, Charles H. Allen, of Boston, in said county, do on oath declare and say that I am president of the Central National Bank of Boston and of the Home Savings bank; that I have known Alfred A. Marcus, of said Boston, for many years, and have had large and continuous business dealings with him; that since I became president of the Home Savings bank Mr. Marcus purchased from the savings bank upwards of $250,000 worth of real estate; that said Marcus has for several years past kept an account at the Central National
199 bank, and has been in the banking-rooms of said Central National bank nearly every day, but that during the time that he has had an account in said bank he has never been in the bank on Saturday; that I know Mr. Marcus to be an orthodox Jew, with conscientious scruples with regard to the strict observance of his Sabbath.

CHAS. H. ALLEN.

Subscribed and sworn to third day of April, 1891, before me—

CHARLES F. ELDRIDGE,

[SEAL.] *Notary Public, Suffolk County, Massachusetts.*

COMMONWEALTH OF MASSACHUSETTS:

OFFICE OF THE SECRETARY, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Charles F. Eldredge was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted, with jurisdiction and the right to act in all the counties; that as such notary public he is authorized by law to administer oaths and take acknowledgements of deeds and other instruments; that to his acts and attestations as s-ch full faith and credit are and ought to be given in and out of court, and that I believe the signature to the annexed attestation to be genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date firs- above written.

[SEAL.] WM. M. OLIN,

Secretary of the Commonwealth.

Endorsed: No. 46. Equity.

200 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

I, Brice S. Evans, of Boston, in said county, on oath do declare an- say that I am an agent and large dealer in real estate in said

Boston and have been for many years, and that I am familiar with real-estate transactions in said Boston; that I have known Alfred A. Marcus, of said Boston, for many years and have had business dealings with him; that said Marcus' real-estate transactions have been very large since I have known him, for nearly twenty years last past.

I do further say and declare that I believe said Marcus to be an orthodox Jew, and that he, to my knowledge, has never transacted any business whatever on the seventh day of the week, which is the Jewish Sabbath; that he for many years had an office adjacent to mine, and that I never saw him at his place of business on the seventh day of the week, and that I would have seen him had he been at his place of business on said day; and, further, that I would never hold a sale of any piece of property in which I thought said Marcus was interested on Saturday.

BRICE S. EVANS.

Subscribed and sworn to this thirtieth day of March, 1891, before me—

[SEAL.] HENRY L. MITCHELL,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S OFFICE, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto
201 annexed Henry L. Mitchell was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court; that as such notary public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments, and that I believe his signature to the annexed attestation is genuine.

In testimony of which I have hereto affixed the seal of the Commonwealth the date first above written.

[SEAL.] WM. M. OLIN.
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus to intervene. Affidavit of Brice S. Evans. Filed Apr. 27, 1891. C. L. Fitch, clerk.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

I, Horace S. Crowell, of Boston, in said county, do on oath depose and say that I am an auctioneer and dealer in real estate; that I have known Alfred A. Marcus, of said Boston, for many years, and have had many large business transactions with him; that I have found him to be an orthodox Jew, with conscientious scruples
202 in regard to the strict observance of Saturday, which is his Sabbath, and never have seen him upon that day; that I

would never hold a sale of a piece of real estate in which I thought said Marcus was interested upon Saturday.

HORACE S. CROWELL.

Name "Marcus" rewritten before signing.

Subscribed and sworn to this twenty-seventh day of March, 1891, before me—

[SEAL.] CLARENCE F. ELDREDGE,
Notary Public for Suffolk County, Massachusetts.

My commission expires May 1, 1891.

COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S OFFICE, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Clarence F. Eldredge was a notary public for the county *fo* Suffolk, in the said Commonwealth, duly commissioned and constituted; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court; that as such notray public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments, and that I believe his signature to the annexed attestation is genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Co. *et als.* Petition of Alfred A. Marcus for leave to intervene. Affidavit of Horace S. Crowell. Filed Apr. 27, 1891. C. L. Fitch, clerk.

203 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

I, Charles O. Billings, of Boston, in said county, on oath do declare and say that I have known Alfred A. Marcus, of said Boston, for many years; that said Marcus is a large dealer in real estate in said Boston, and has had large business transactions with many of the leading capitalists in said city.

I do further say and declare that I believe said Marcus to be an orthodox Jew, and that he, to my knowledge, has never transacted any business on the seventh day of the week, the Jewish Sabbath.

CHARLES O. BILLINGS.

Subscribed and sworn to this third day of April, 1891, before me—

[SEAL.] CLARENCE F. ELDREDGE,
Notary Public for Suffolk County, Massachusetts.

COMMONWEALTH OF MASSACHUSETTS:

OFFICE OF THE SECRETARY, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Clarence F. Eldredge was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted, with jurisdiction and the right to act in any and all the counties; that as such notary public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court, and that I believe the signature to the annexed attestation to be genuine.

In testimony of which I have hereto affixed the seal of the Commonwealth the date first above written.

[SEAL.]

WM. OLIN,
Secretary of the Commonwealth.

204 Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et als. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus for leave to intervene. Affidavit of Charles O. Billings. Filed Apr. 27, 1891. C. L. Fitch, clerk.

205 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

I, Lorin L. Fuller, of Boston, in said county, do declare and say that I have been mayor of the city of Malden, in the county of Middlesex, and have carried on a large building and real-estate business in and about said Boston for many years; that I know Alfred A. Marcus, of said Boston, and have known him for many years, and have had large business dealings with him; that I believe him to be an orthodox Jew, and that he has, to my knowledge, never transacted any business whatever on the seventh day of the week, which is the Jewish Sabbath, and that he has refused, to my knowledge, to do any business on the seventh day of the week; that I have known Mr. Marcus to be engaged in large transactions, especially in real estate; that he is well known as a business man in Boston and has had large business transactions with many of the principal capitalists of that city.

LORIN L. FULLER.

Subscribed and sworn to this twenty-seventh day of March, 1891, before me—

CLARENCE F. ELDREDGE,
[SEAL.] *Notary Public for Suffolk County, Massachusetts.*

My commission expires May 1, 1891.

206 COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S OFFICE, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed

Clarence F. Eldredge was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court; that as such notary public he is by law authorized to administer oaths and to take acknowledgements of deeds and other instruments, and that I believe his signature to the annexed attestation is genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date firs- above written.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus to intervene. Affidavit of Lorin L. Fuller. Filed Apr. 27, 1891. C. L. Fitch, clerk.

207 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

I, Walter R. Dyer, of Boston, in said county, on oath do declare and say that I am a son of Micah Dyer, Jr., of said Boston; that I for some years was engaged in the lumber business in Michigan, and was a member *the* the State legislature of Michigan; that I know of my father, Micah Dyer, Jr., having had large real estate transactions with Alfred A. Marcus, of said Boston; that said Marcus has often been at the office, which I occupied jointly with my father, and never has been there on the seventh day of the week, the Jewish Sabbath.

And that I further say and declare that I believe said Marcus to be an orthodox Jew, who conscientiously observes the seventh day of the week as his Sabbath, and that he does no business whatever on that day.

WALTER R. DYER.

Subscribed and sworn to this twenty-seventh day of March, 1891, before me—

CLARENCE F. ELDREDGE,
[SEAL.] *Notary Public for Suffolk County, Massachusetts.*

My commission expires May 1, 1891.

208 COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S OFFICE, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Charles F. Eldredge was a notary public for the county of Suffolk, in the said Commonwealth, duly commissiones and constituted; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court; that as such notary public he is by law authorized to administer oaths and t-ke acknowledge-

ments of deeds and other instruments, and that I believe his signature to the annexed attestation is genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

WM. M. OLIN,
[SEAL.] *Secretary of the Commonwealth.*

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus to intervene. Affidavit of Walter R. Dyer. Filed Apr. 27, 1891. C. L. Fitch, clerk.

209 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

I, F. G. Storey, of Boston, on oath declare and say that I am superintendent of the security safe deposit vaults in the Equitable building of said Boston, and have been since 1882. Since 1882 Alfred A. Marcus, of said Boston, has had a compartement in said safe deposit vaults and has been in said vaults very frequently during said time; that I have never seen him at the vaults on Saturday, the seventh day of the week, although I have seen him almost daily on other days; that I know said Marcus to be an orthodox Jew, with conscientious regard for the observance of his Sabbath.

F. G. STOREY.

Subscribed and sworn to this twenty-eighth day of March, 1891, before me--

CHAS. ALLEN TABER,
[SEAL.] *Notary Public.*

210 COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S OFFICE, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Charles Allen Taber was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court; that as such notary public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments, and that I believe his signature to the annexed attestation to be genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.] WM. M. OLIN,.
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus for leave to intervene. Affidavit of F. G. Storey. Filed Apr. 27, 1891. C. L. Fitch, clerk.

211 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

I, Albert R. Whittier, of Boston, in said county, do on oath declare and say that I am a dealer in real estate in said Boston; that I have known Alfred A. Marcus for many years, and have had business dealings with him; that I have never seen him on Saturday, the seventh day of the week, which is the Jewish Sabbath, and know him to be an orthodox Jew, who strictly refrains from doing any business whatever on Saturday.

ALBERT R. WHITTIER.

Subscribed and sworn to this twenty-seventh day of March, 1891, before me—

CLARENCE F. ELDREDGE,
[SEAL.] *Notary Public for Suffolk County, Massachusetts.*

Commission expires May 1, 1891.

212 COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S OFFICE, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Clarence F. Eldredge was a notary public for the county of Suffolk, in said Commonwealth, duly commissioned and constituted; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court; that as such notary public he is by law authorized *by law* to administer oaths and take acknowledgements of deeds and other instruments, and that I believe the signature to the annexed attestation is genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

WM. M. OLIN,
[SEAL.] *Secretary of the Commonwealth.*

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus to intervene. Affidavit of Albert R. Whittier. Filed Apr. 27, 1891. C. L. Fitch, clerk.

213 "A."

BOSTON, *April* 1, 1891.

R. M. Morse, Jr., Esq., counsel, Boston, Mass.

DEAR SIR: We herewith agree that in case that a resale of the property of the Pewabic Mining Company (so called) is ordered by the court we will give for said property the sum of $800,000, and as an earnest thereof pay into the court $80,000 as an advance of 10 per cent. over and above the amount bid and as a fund to cover the expense of the resale, and we further agree to go as sureties upon a

bond that a starting bid of eight hundred thousand dollars shall be made or will furnish a bond satisfactory to the court.

(Signed) IRVING A. EVANS.
DANIEL L. DEMMON.
CHARLES A. PRINCE.
E. E. PRATT.
J. O. WETHERBEE.
F. V. PARKER.

214 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

I, Charles Albert Prince, of Manchester, Mass., on oath depose and say that J. Otis Wetherbee, one of the subscribers to an agreement, hereto attached, marked "A," in reference to the purchase of the property of the Pewabic Mining Company, is worth, to my own knowledge, $250,000 over and above all liabilities and is perfectly able to respond to any and all liabilities and obligations he may incur by reason of the said agreement.

I further depose and say that I have been unable to procure in time a proper affidavit from the said Wetherbee of the nature obtained from the other subscribers.

CHARLES A. PRINCE.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

BOSTON, *April 6th*, 1891.

Then personally appeared Charles A. Prince, to me personally known, and made oath that the above statement by him subscribed is true.

Before me—

[SEAL.] FRED. W. BROWN,
Notary Public.

215 COMMONWEALTH OF MASSACHUSETTS:

OFFICE OF THE SECRETARY, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Fred. W. Brown was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted, with jurisdiction and the right to act in all the counties; that as such notary public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court, and that I believe the signature to the annexed attestation to be genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus for leave to intervene. Affidavit of Charles A. Prince. Filed Apr. 27, 1891. C. L. Fitch, clerk.

216 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

I, Daniel L. Demmon, of Boston, in said county, on oath say that I have subscribed my name to a letter dated April 1, 1891, to R. M. Morse, Jr., in reference to the purchase of the property of the Pewabic Mining Company; that I am the treasurer of the Franklin Mining Company, and am worth above all my liabilities at least two hundred and fifty thousand dollars, and am able to respond and will respond *and will respond* to any obligation which may be incurred by me on account of said purchase; and that I will furnish the sum of one hundred and twelve thousand five hundred dollars towards the sum of nine hundred thousand dollars, which I hereby agree may — bid at a resale of said property.

I further say that I have made and do make this agreement to furnish this amount towards the purchase of said property at the request of Alfred A. Marcus; that I personally have taken no action in respect to the petition of said Marcus, and that said Marcus to my knowledge has been actively engaged since he first learned of the sale of said property in securing support necessary to fulfill his offer.

DAN'L L. DEMMON.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *April 6th*, 1891.

Then personally appeared Daniel L. Demmon, to me personally known, and made oath that the foregoing statement by him subscribed is true.

Before me—

[SEAL.] FRED. W. BROWN,
Notary Public.

217 COMMONWEALTH OF MASSACHUSETTS:

OFFICE OF THE SECRETARY, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Fred. W. Brown was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted, with jurisdiction and the right to act i- all the counties; that as such notary public he is by law authorized to administer oaths and take acknowledgement of deeds and other instruments; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court, and that I believe the signature to the annexed attestition to be genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above writt-n.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et als. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus to intervene. Affidavit of Daniel L. Demmon. Filed Apr. 27, 1891. C. L. Fitch, clerk.

218 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

I, Edward E. Pratt, of Boston, in said county, on oath say that I have subscribed my name to a letter, dtaed April 1, 1891, to R. M. Morse, Jr., in reference to the purchase of the property of the Pewabic Mining Company; that I am assistant treasurer of the Chicago, Burlington & Quincy Railroad Company, and am worth above all my liabilities at least $250,000, and am able to respond and will respond to any obligation which may be incurred by me on account of said purchase, and that I will furnish two hundred and twenty-five thousand dollars towards the sum of $900,000, which I hereby agree may be bid at a resale of said property.

I further say that I have made and do make this agreement to furnish this amount towards the purchase of said property at the request of Alfred A. Marcus.

E. E. PRATT.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

BOSTON, *April 6th*, 1891.

Then personally appeared E. E. Pratt, to me personally known, and made oath that the foregoing affidavit by him subscribed is true.

Before me—

[SEAL.] FRED. W. BROWN,
Notary Public.

219 COMMONWEALTH OF MASSACHUSETTS:

OFFICE OF THE SECRETARY, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Fred. W. Brown was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted, with jurisdiction and the right to act in any and all the countices; that as such notary public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court, and that I believe the signature to the annexed attestation to be genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus to intervene. Affidavit of Edward E. Pratt. Filed Apr. 27, 1891. C. L. Fitch, clerk.

220 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

I, Reuben E. Demmon, of Boston, in said county, on oath do declare and say that I am the president of the Howard National Bank of Boston, and that I know Alfred A. Marcus, of said Boston, and have known him for many years; that I have had knowledge of his desire to bid at the auction sale of the property of the Pewabic Mining Company; that on Friday, January 23, 1891, said Alfred A. Marcus was in my office, in the Howard National bank, in said Boston, and that I asked him whether he was going to bid at the sale of said property on the following Saturday, January 24; that Mr. Marcus immediately replied that he fully intended to be present or represented at the sale of said property and to bid upon the same; that he was unaware of the fact that the said property was to be sold on Saturday, January 24; that he appeared to be greatly surprised and disturbed by my announcement and signified his intention to immediately take some steps to protect himself in the matter.

I do further say and declare that I believe said Alfred A. Marcus to be an orthodox Jew, and that he, to my knowledge, has never transacted any business whatever upon the seventh day of the week.

REUBEN E. DEMMON.

Subscribed and sworn to this thirtieth day of March, 1891, before me—

[SEAL.] HOWARD D. NASH,
Notary Public.

221 COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S OFFICE, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Howard D. Nash was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted; that to his acts and attestations full faith and credit *full faith and credit* are and ought to be given in and out of court; that as such notary public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments, and that I believe his signature to the annexed attestation is genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus to intervene. Affidavit of Reuben E. Demmon. Filed Apr. 27, 1891. C. L. Fitch, clerk.

222 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

I, Charles A. Prince, of Boston, in said county, on oath say that I have subscribed my name to a letter, dated April 1, 1891, to R. M. Morse, Jr., in reference to the purchase of the property of the Pewabic Mining Company; that I am a director and general counsel of the New York and New England Railroad, and am worth, above all my liabilities, at least $250,000, and am able to respond and will respond to any obligation which may be incurred by me on account of said purchase, and I will furnish the sum of two hundres & twenty-five thousand dollars towards the sum of $900,000, which I hereby agree may be paid at a resale of said property.

I further say that I have made and do make this agreement to furnish this amount towards the purchase of said property at the request of Alfred A. Marcus; that I personally took no action in respect to the petition of said Marcus, and had no knowledge of the same until after it had been filed and the order of notice issued thereon; that said Marcus, to my knowledge, has been actively engaged in securing the support necessary to fulfill his offer to bid $800,000 as a starting bid at a resale of said property.

CHARLES A. PRINCE.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

BOSTON, *April 6th,* 1891.

Then personally appeared Charles A. Prince, to me personally known, and made oath that the above affidavit by him subscribed is true.

Before me—

[SEAL.] FRED. W. BROWN,
Notary Public.

223 COMMONWEALTH OF MASSACHUSETTS:

OFFICE OF THE SECRETARY, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Fred. W. Brown was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted, with jurisdiction and the right to act in all the counties; that as such notary public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments; that to his acts as such full faith and credit are and ought to be given in and out of court, and that I believe the signature to the annexed attestation to be genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus for leave to intervene. Affidavit of Charles A. Prince. Filed Apr. 27, 1891. C. L. Fitch, clerk.

224 Office of Quincy Mining Company, 52 Broadway, room 70.

NEW YORK, *Feb.* 26, 1891.

To the stockholders:

Having in view the probability of the Pewabic property, which adjoins our mine on the north, being sold at auction, it was thought desirable at the stockholders' meeting held June 5, 1889, to increase the capital from 40,000 shares to 50,000 shares, the additional 10,000 shares being intended to provide for the purchase of the Pewabic should such opportunity arise.

At the meeting it was voted—

"That the directors have power to order the 10,000 shares of increased stock, the whole or any part to be issued at such times as they may desire, and to direct by vote how this increased stock shall be sold, used, or appropriated for the benefit of the company."

The sale took place at Houghton, Mich., January 24 last, and the property was sold to Messrs. Mason & Smith, of New York city, who bought for the object of transferring it to the Quincy Mining Company, and a directors' meeting was therefore promptly called to act upon the matter. The total cost, including all expenses of litigation which Messrs. Smith & Mason had conducted and which had extended over a period of some seven years, was estimated about $800,000. After a full consideration by your board of directors, as there was not time to offer rights to stockholders and it was impossible to realize promptly on the stock from open sale the amount of money needed, it was un-imously voted to accept the offer
225 of Messrs. Mason & Smith to transfer the property to the company in consideration of the issue to them of the 10,000 shares of increased stock upon the delivery of a satisfactory deed. Your directors think this plan was the wisest and best that could under the circumstances have been adopted. With an increased capital of 25 per cent. we will require additional mining territory, that not only insures longer life, but is expected soon to enable us to increase our product fully 50 per cent. and at a cost, when all contemplated improvements are completed, that will compare favorably with that of any copper mine on Lake Superior. All of which, it is hoped, will meet the approval of the stockholders.

THOMAS F. MASON, *President.*

Endorsed: 46. The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Circular of Quincy Mining Co. Filed Apr. 27, 1891. C. L. Fitch, clerk.

226 This indenture, made the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and ninety-one, between Peter White, residing in the city and county of Marquette, Michigan, special master, duly appointed by decree of the circuit court of the United States for the western district of Michigan, northern division, in equity, in a cause therein depending between Thomas H. Mason, William Hart Smith, and Sullivan Ballou, complainants, and The Pewabic Mining Company, Johnson Vivian, Hanry Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, defendants, party of the first part, and Thomas Henry Mason and William Hart Smith, copartners under the firm name of Mason & Smith, both residing in the city, county, and State of New York, parties of the second part, witnesseth:

Whereas at a session of said court, in chancery sitting, at the court-house, in the city and county of Marquette, in the State of Michigan, on the sixth (6) day of May, in the year of our Lord one thousand eight hundred and ninety, it was, among other things, ordered, adjudged, and decreed by said court, in the cause above entitled and then pending therein, that the assets and property of the said Pewabic Mining Company be sold at public vendue for cash, to the highest bidder, in one body, after giving the notice of said sale required by law and the practice of said court, and that said property be offered for sale at the front door of the court-house, in the village of Houghton, in the county of Houghton and State of Michigan, by and under the direction of said special master;

And whereas the said party of the first part to these presents, in pursuance of said order and decree, and also in pursuance of the further order of said court, made and filed the 25th day of October, A. D. 1890, and in pursuance of another order of said court, made and dated the 15th day of December, A. D. 1890, wherein the day of sale of said property was fixed for Saturday, the 24th day of January, A. D. 1891, at the front door of the court-house, in the village of Houghton and county of Houghton, Michigan (said court-
227 house being the place for holding the circuit court for said county of Houghton and being within the western district of Michigan, northern division), did, on the 24th day of January, A. D. 1891, at ten o'clock in the forenoon, sell at public auction, at the front door of the court-house, in the village and county of Houghton, Michigan, aforesaid, the said premises hereinafter particularly described, having first given previous notice of the time and place of sale, as required by the orders and decrees aforesaid and the practice of said court, at which sale the premises were struck off to the said parties of the second part to these presents for the sum of seven hundred and ten thousand dollars ($710,000.00), that

being the highest sum bidden for the same and they being the highest bidders therefor;

And whereas, on the — day of February, A. D. 1891, said party of the first part duly filed in said court a report of said sale and all his doings thereat as such special master, and forthwith caused copies thereof to be served upon all the solicitors for the defendants above named, and also on the solicitors for the complainants;

And whereas said sale and said report of sale were by said court, at chambers, in all respects confirmed on the 2nd day of March, A. D. 1891, as by reference to said order for confirmation, on file in the office of the clerk of said court, will more fully appear:

Now, therefore, this indenture witnesseth: That said Peter White, special master as aforesaid and the party of the first part to it, these presents, in order to carry into effect the said sale, so made as aforesaid in pursuance of said decrees and orders of said court, and in the consideration of the premises and of the sum of seven hundred and ten thousand dollars ($710,000), paid by the said parties of the second part to these presents to the said party of the first part hereto in manner following, to wit: Seventy-one thousand dollars ($71,000) at the time said premises were so bidden off as aforesaid to said parties of the second part, and the further sum of six hundred
228 and thirty-nine thousand dollars ($639,000.00) at the date of the delivery of these presents, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey, and confirm, unto the said parties of the second part and to their successors and assigns forever all the following lands and premises, situate in the county of Houghton and State of Michigan, to wit:

All the following-described real estate, together with all and singular the houses, buildings, stamp-mill, mining plant, engines, machinery, pumps, rolling stock, mining supplies thereon and therein and belonging thereto, and all mining rights connected therewith, including the stamp-mill plant, with its pumps and buildings, the water front of the stamp-mill on Portage lake or river, eighty-nine (89) dwellings and nine buildings and shops and entire mining equipment of the Pewabic Mining Company, said real estate and real interests being as follows, to wit:

1st. The northwest quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west.

2. The northeast quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, saving, excepting, and reserving from said northeast quarter, as heretofore reserved in a conveyance to said Pewabic Mining Company by August Coburn and wife, five (5) acres in said section twenty-five (25), which said five (5) acres is in a square form, with sides of equal length on the north and west lines of said quarter section; excepting also a lot leased to William Tewk September 1st, 1866, the lease of the same being for twenty-five (25) years, recorded in Liber I of Miscellaneous Records, page 240, of record in the office of the register of deeds of Houghton county, Michigan, described as follows: Lot No. —, in

the subdivison of the northeast quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, excepting and reserving also from said northeast quarter a tract leased to Isaac Jones July 1st, 1868, the lease of the same being for
229 twenty-five (25) years, recorded in Liber I of Miscellaneous Records, page 487, in the office of the register of deeds of said county, described as follows: The lot in the subdivision of the northeast quarter of section twenty-five (25), in t-wnship fifty-five (55) north, of range thirty-four (34) west, lands belonging to the Pewabic Mining Company.

3. Also the southwest quarter of *of* section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, saving and excepting from said southwest quarter a certain parcel of land conveyed in a deed by the said Pewabic Mining Company to the Franklin Mining Company, the deed bearing date the 21st day of August, 1864, recorded in said register's office of said county in Liber 5 of Deeds, on page 43, described as follows: Beginning at a point on the section line between said sections twenty-five (25) and thirty-six (36) four hundred and twenty-two (422) feet eight (8) inches easterly from the northeast corner of lands owned by the Detroit and Lake Superior Copper Company, thence north nineteen (19) degrees twenty-three (23) minutes east eighty-nine (89) feet nine (9) inches, thence at right angles southeasterly sixty (60) feet, thence south nineteen (19) degrees twenty-three (23) minutes west sixty-eight (68) feet eight (8) inches to said line between sections twenty-five (25) and thirty-six (36), and thence west on said line sixty-three (63) feet seven (7) inches to the point of beginning; excepting also from said southwest quarter of said section twenty-five (25) a parcel of land conveyed in a deed made by said Pewabic Mining Company to Samuel F. Hodge, the deed bearing date the 1st day of November, 1876, and recorded in said register's office of said county, in volume 17 of Deeds, at page fifty-one (51), described as follows: Commencing at a point on the east boundary of John Senter's powder-magazine lot at the point where the said line is intersected by the east and west section line between said sections twenty-five (25) and thirty-six (36), thence north nineteen (19) degrees twenty-three (23) minutes east two hundred and thirty-nine (239) feet, thence due east two hundred and fifty-eight (258) feet, thence at right angles due south to said sec-
230 tion line, thence west along said section line to the point of beginning, the minerals and the right to mine the same being retained by and reserved to the said Pewabic Mining Company; excepting also from above said southwest quarter of said section twenty-five (25) a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to the Detroit and Lake Superior Company, the deed bearing date November 15th, 1878, and recorded in said register's office of said county, in volume nineteen (19) of Deeds, at page thirty (30), described as follows: Beginning at a point three hundred and forty (340) feet north from an iron pin in section line on the south boundary of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, that point being four

hundred and twenty-four (424) feet east of the southwest corner of said section twenty-five (25), thence running west twenty (20) feet, thence north nineteen (19) degrees thirty-nine (39) minutes west four hundred and sixty-two (462) feet, thence due east seven hundred and fifteen (715) feet, thence south twenty-seven (27) degrees fifty-two (52) minutes west four hundred and ninety-two (492) feet, thence west twenty (20) feet, thence north eighty-five (85) feet, thence west two hundred and ninety (290) feet, thence south eighty-five (85) feet to place of beginning, containing four and sixty-five one-hundredths (4.65) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company; excepting from said southwest quarter of said section twenty-five (25) a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to Johnson Vivian, the deed bearing date the 28th day of April, 1879, and recorded in said register's office of said county, in volume twenty (20) of Deeds, at page four hundred and thirty-nine (439), described as follows: Commencing at the southwest corner of said section twenty-five, thence north along section line six hundred and sixty and one-tenth (660.1) feet, thence deflecting eighty-nine (89) degrees eight (8) minutes east two hundred and seventy-nine (279) feet seven (7) inches, thence deflecting seventy (70) degrees twenty-one (21) minutes southeasterly three hundred and
231 thirty-nine and eight-tenths (339.8) feet, thence deflecting seventy (70) degrees twenty-one (21) minutes east twenty (20) feet, thence deflecting ninety (90) degrees south three hundred and forty (340) feet, thence deflecting ninety (90) degrees west four hundred and twenty-four (424) feet to place of beginning, containing five and seventy-eight one-hundredths (5.78) acres, the minerals and the right to mine the same being retained by and reserved to the said Pewabic Mining Company; reserving also from said southwest quarter of said section twenty-five (25) a parcel of land leased for ninety-nine (99) years to the Detroit & Lake Superior Copper Company, said lease being of date October 7th, 1869, recorded in Libe- I of Miscellaneous Records in the office of the register of deeds of said county, at page three hundred and twelve (312), described as follows: Commencing at a point on the north boundary of section thirty-six (36), in township fifty-five (55) north, of range thirty-four (34) west, distant four hundred and twenty-four (424) feet east from the northwest corner of said section thirty-six (36), thence running due north four hundred and twenty-five (425) feet to an iron stake, thence east two hundred and ninety (290) feet to an iron stake, thence south three hundred and twenty-five (325) feet to an iron stake, thence east six hundred and forty-one (641) feet to an iron stake, thence south one hundred (100) feet to the north boundary of said section thirty-six (36), thence west along said section line to the place of beginning, containing four and twenty-nine one-hundredths (4.29) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company; excepting also from said southwest quarter of said section twenty-five (25) a tract of land leased to Joseph Hamel for a period of seventy-five (75) years, the lease being of date March 7th, 1870, recorded in Liber I of Miscella-

neous Records in the office of the register of deeds of said county, at page three hundred and thirty-six (336), described as follows: Commencing at the southwest corner of said section twenty-five (25), thence north along the west boundary eighteen hundred and ninety-one (1,891) feet, thence east nine hundred and sixty-three (963) feet,
232 thence south nineteen (19) degrees east two thousand (2,000) feet, thence west eighty (80) feet, thence north nineteen (19) degrees twenty-three (23) minutes east sixty-eight (68) feet eight (8) inches, thence north seventy (70) degrees thirty-seven (37) minutes west sixty (60) feet, thence south nineteen (19) degrees twenty-three (23) minutes west eighty-nine (89) feet nine (9) inches, thence west one hundred and eleven (111) feet, thence north one hundred (100) feet, thence west six hundred and forty-one (641) feet, thence north three hundred and twenty-five (325) feet, thence west two hundred and ninety (290) feet, thence south four hundred and twenty-five (425) feet, thence west four hundred and twenty-four (424) feet to a point of beginning, containing fifty-one and sixty-five one hundredths (51.65) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company; reserving also from said southwest quarter of said section twenty-five (25) a tract leased to William Hosking for a period of twenty-five (25) years, the lease being of date September 7th, 1869, recorded in Liber I of Miscellaneous Records in the office of the register of deeds of said county, at page four hundred and fifty (450), described as follows: A lot in section twenty-five (25), *twon.* fifty-five (55) north, of rangr thirty-four (34) west, near wagon road leading to the Pewabic stamp-mill, on which stands a house formerly owned by Thomas Odgers; reserving also from said southwest quarter of said section twenty-five (25) a tract leased to John Phillips for a period of twenty (20) years, the lease being of date June 29th, 1872, recorded in Liber I of Miscellaneous Records in the office of the register of deeds of said county, at page five hundred and eighty-seven (587), described as follows: A lot of land on the right-hand side of the road leading from the stamp-mill to the mine, on which his dwelling-house is situated; excepting and reserving also from the west half of said section twenty-five (25) the right of way for the Quincy and Torch Lake railroad, the instrument being of record in volume twenty-nine (29) of Deeds in the office of the register of deeds
233 of said county, at page three hundred and fifteen (315), the instrument being of date May 23rd, 1889, described as follows: A tract of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line hereinafter described, across the following pieces of land, viz: The west half of section twenty-five (25), township fifty-five (55) north, of range thirty-four (34) west, commencing at a point on the west side of said section twenty-five (25) one hundred and twenty and two-tenths (120.2) feet north of the quarter post, thence south eighty-five (85) degrees and twenty-six and one-third (26⅓) minutes east thirteen hundred and twelve and nine-tenths (1,312.9) feet, thence on a two (2) degree curve to the left two hundred and seventy-eight and five-tenths (278.5) feet, thence north eighty-eight (88) degrees fifty-eight and one-half (58½)

minutes east six hundred and forty-three and four-tenths (643.4) feet, thence on an eight-degree curve to the right three hundred and forty-three and four-tenths (343.4) feet to a point on the north-and-south center line of said section twenty-five (25) ninety-six (96) feet south of the center post.

4. Also the east five hundred and seventy-six (576) feet of lot one (1), in section thirty-six (36), of township fifty-five (55) north, of range thirty-four (34) west, described as follows: Commencing at the north quarter post of said section thirty-six (36), thence west along the section line five hundred and seventy-six (576) feet to the east boundary of Hodges' property, thence south along said east boundary to the shore of Portage lake, thence easterly and southeasterly along the shore of Portage lake to the north-and-south center line of said section thirty-six (36), thence north along said center line to the quarter post of beginning.

5. All that portion of lot two (2), in section thirty-six (36), in township fifty-five (55) north, of range thirty-four (34) west, described as follows: Commencing at the meander corner on the section line north of said section thirty-six (36), run east on said section line two hundred and forty-nine (249) feet, thence south at right angles with said section line to the shore of Portage lake, thence
234 northwesterly along said shore to meander corner of beginning.

6. Also the following-described real estate, rights, and easements, situated in said county of Houghton, to wit: the vein or lode known as the Pewabic lode, which outcrops on lands of the Pewabic Mining Company in said county of Houghton, and any other lode or lodes, vein or veins, which outcrops within two hundred (200) feet east of the outcrop of said Pewabic lode, where the same lies under the southeast quarter of section twenty-three (23), in township fifty-five (55) north, of range thirty-four (34) west, in the county of Houghton, and the right to mine and work the said Pewabic lode and such other vein or veins, lode or lodes, being the same property conveyed to the Pewabic Mining Company by Thomas W. Edwards and wife by warranty deed dated the 29th day of October, 1879, and recorded in the register's office of said county of Houghton, in Liber 19 of Deeds, on page three hundred and fifty-three (353).

7. Also the right to mine by a perpendicular line all minerals lying northwesterly of a line running north fifty-eight (58) degrees west from a point where the Pewabic vein at the surface of the earth crosses the dividing line between the lands of the Pewabic Mining Company and the lands of the Franklin Mining Company, being a part of the same rights and priveleges that were conveyed to the Pewabic Mining Company by the Franklin Mining Company by deed dated February 1st, 1862, and recorded September 15th, 1875, in the register's office of the said county of Houghton, in volume seventeen (17) of Deeds, on page nine (9).

8. Also the east half and the southwest quarter of section ten (10); also the southeast quarter and the southeast quarter of the southwest quarter and the southeast quarter of the northeast quarter of section nine (9), all in township fifty-five (55) north, of range thirty-

four (34) west, all constituting and intending herein and hereby to embrace all the assets and property of the Pewabic Mining Company, a Michigan corporation having its principal office in the State of Michigan, in the said county of Houghton; also all of the assets and property, real and personal, including mining rights and the Pewabic Mining Company's lands above described as leased
235 and all lands not hereinbefore described belonging to the said The Pewabic Mining Company, and all other property, real, personal, or mixed, and any other asset of said company not herein specifically described, of every nature, belonging to or appertaining to said company: Provided, however, that nothing herein contained shall be considered as passing to the said Thomas H. Mason and William Hart Smith, parties of the second part, the claim or claims, if any, against the former directors of the said Pewabic Mining Company, defendants in the said cause, for any sum or sums found to be due from them on the accounting against them directed in said cause, together with all and singular the rights, titles, members, priveleges, hereditaments, and appurtanances to the same belonging or in anywise appertaining; to have and to hold the said premises above described and hereby intended to be granted and conveyed unto the said parties of the second part, their successors and assigns, to the only proper use, benefit, and behoof of the said parties of the second part, their successors and assigns forever.

In witness whereof the said party of the first part, special master as aforesaid, has hereunto set his hand and seal the day and year first above written.

PETER WHITE,
Special Master.

Signed, sealed, & delivered in presence of—
JAMES H. CULLEN.
BENJAMIN S. WARREN.

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this twenty-eighth (28th) day of March, in the year of our Lord one thousand eight hundred and ninety-one, before me, the undersigned, personally appeared Peter White, special master, known to me to be the person described in and who executed the above indenture, and acknowledged that he executed the
236 same freely for the use and purposes therein mentioned.

[Not. Seal, J. H. C.]

JAMES H. CULLEN,
Notary Public in and for the County of Wayne, Michigan.

STATE OF MICHIGAN, } ss:
County of Houghton, }

OFFICE OF REGISTER OF DEEDS.

I, Peter Primeau, register of deeds of said county, do hereby cer-

tify that the annexed is a true and accurate copy of the original record of a deed from Peter White, special master, to Thomas H. Mason and William Hart Smith, in my custody and keeping as such register; that I have carefully compared said copy with said original record, appearing in Liber 31 of Deeds, on pages 421 to 432, inc., and that the same is a true and accurate copy of said original and the whole of the same.

In witness whereof I have hereunto set my hand and affixed the seal of the circuit court of said county this 20th day of April, A. D. 1891.

[SEAL.] PETER PRIMEAU,
Register of Deeds.

(Endorsed:) Deed. Peter White, special master, to Thomas H. Mason and Wm. Hart Smith. Recorded March 30th, 1891, in vol. 31 of Deeds, pages 425 to 432, inc. Peter Primeau, register. Filed April 27th, 1891. C. L. Fitch, clerk.

237 This indenture, made this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and ninety-one, between Thomas H. Mason and William Hart Smith and Kate H. Smith, his wife, all of the city, county, and State of New York, party herein of the first part, and the Quincy Mining Company, a body corporate created and existing under the laws of the State of Michigan and having its principal office in said State, in the county of Houghton, party herein of the second part, witnesseth:

Whereas, in pursuance and by virtue of an order and decree in the circuit court of the United States for the western district of Michigan, northern division, in equity, made and dated on the sixth day of May, in the year of our Lord one thousand eight hundred and ninety, in a certain cause therein depending, wherein Thomas H. Mason, William Hart Smith, and Sullivan Ballou were complainants and The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company were defendants, Honorable Peter White, the special master appointed by said court for that purpose in and by said decree, did, by the direction and order of the said court, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety-one, in accordance with said decree and the order of said court, after notice required by said decree, at the front door of the court-house, in the village and county of Houghton, in the State of Michigan, in the western district and northern division thereof, offer for sale and sell at public auction, to the highest bidder therefor, in one body, all the real estate, lands, and hereditaments, together with all and singular the houses, buildings, stamp-mill, mining plant, engines, machinery, pumps, rolling stock, mine supplies thereon and therein and belonging thereto, and all the mining rights connected therewith, including the stamp-mill plant, with its pumps and buildings, the water front of the stamp-mill site on Lake Portage or river, eighty-nine dwellings and nine buildings and shops and the entire equip-

ment of the Pewabic Mining Company, constituting all the assets and property of the Pewabic Mining Company, a
238 Michigan corporation having its principal office in the State of Michigan, in the said county of Houghton, hereinafter more particularly set out and described and included;

And whereas the said Thomas H. Mason and William Hart Smith, partners under the name and style of Mason & Smith, of the party herein of the first part, were the highest bidders at said sale, and then and there purchased the said property and all of the property hereinafter more particularly described and included; and whereas afterwards, to wit, on the second day of March, in the year of our Lord one thousand eight hundred and ninety-one, in said court and cause, on reading the master's report of said sale, theretofore filed, and after hearing all objections and exceptions to said report of sale and to the confirmation thereof, it was ordered by the said court that all objections and exceptions to said report be overruled, and that said report of sale and said sale be in all respects confirmed;

And whereas, in accordance with said decree and the orders of said court, the said special master, on payment of the amount bid as aforesaid by the said purchasers at said sale, the receipt whereof was therein and thereby duly acknowledged by said special master, did, under his hand and seal, by due indenture, bearing date the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and ninety-one, make, execute, deliver, and acknowledge as his free act and deed, in accordance with the laws of the State of Michigan, a conveyance of all and singular the property, real, personal, and mixed, aforesaid, and hereinafter more particularly described and included, unto the said Thomas H. Mason and William Hart Smith;

And whereas the party of the first part has agreed to sell unto the party of the second part all of the property purchased by the party of the first part as aforesaid:

Now, therefore, the party of the first part, for and in consideration of the sum of seven hundred and ten thousand dollars ($710,000), to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, remised, released, aliened, and confirmed,
239 and doth by these presents grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part and its successors and assigns forever all those certain pieces or parcels of land situate and being in the county of Houghton and State of Michigan and all the property, real and personal and mixed, described as follows, to wit: The following-described real estate, together with all and singular the houses, buildings, stamp-mill, mining plant, engines, machinery, pumps, rolling stock, mining supplies thereon and therein and belonging thereto, and all mining rights connected therewith, including the stamp-mill plant, with its pumps and buildings, the water front of the stamp-mill site on Portage lake or river, eighty-nine dwellings and nine buildings and shops, and entire mining equipment of the Pewabic Mining

Company, said real estate and real interests being as follows, to wit:

1, the northwest quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west; 2d, the northeast quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, saving, excepting, and reserving from said northeast quarter, as heretofore reserved in a conveyance to said Pewabic Mining Company by August Coburn and wife, five (5) acres in said section twenty-five (25), which said five acres is in a square form, with sides of equal length on the north and west lines of said quarter section; excepting also a lot leased to William Tenk September 1st, 1866, the lease of the same being twenty-five years, recorded in Liber I of Miscellaneous Records, page 240, of record in the office of the register of deeds of Houghton county, Michigan, described as follows: Lot No. —, in the subdivision of the northeast quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west; excepting and reserving also from said northeast quarter a tract leased to Isaac Jones July 1st, 1868, the lease of the same being for twenty-five years, recorded in Liber I of Miscellaneous Records, page 487, in the office of the register of deeds of said county, described as follows: The lot in the subdivision of the northeast
240 quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, lands belonging to the Pewabic Mining Company; #3, also the southwest quarter of said section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, saving and excepting from said southwest quarter a certain parcel of land conveyed in a deed by the said Pewabic Mining Company to the Franklin Mining Company, the deed bearing date the 21st day of August, 1864, recorded in said register's office of said county in Liber 5 of Deeds, page 43, described as follows: Beginning at a point on the section line between said sections twenty-five and thirty-six (36) 422 feet 8 inches easterly from the northeast corner of lands owned by the Detroit & Lake Superior Copper Company, thence north nineteen (19) degrees twenty-three (23) minutes east 89 feet 9 inches, thence at right angles southeasterly sixty feet, thence south nineteen (19) degrees twenty-three (23) minutes west 68 feet 8 inches to said line between sections twenty-five (25) and thirty-six (36), and thence west on said line sixty-three (63) feet seven (7) inches to the point of beginning; excepting also from said southwest quarter of said section twenty-five (25) a parcel of land conveyed in a deed made by said Pewabic Mining Company to Samuel F. Hodge, the deed bearing date the 1st day of November, 1876, and recorded in said register's office of said county in volume 17 of Deeds, at page 51, described as follows: Commencing at a point on the east boundary of John Senter's powder-magazine lot at the point where said line is intersected by the east and west section line between said sections twenty-five (25) and thirty-six (36), thence north nineteen (19) degrees twenty-three (23) minutes east two hundred and thirty-nine (239) feet, thence due east two hundred and fifty-eight (258) feet, thence at right angles

due south to said section line, thence west along said section line to point of beginning, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described;

241 excepting also from above said southwest quarter of said section twenty-five (25) a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to the Detroit and Lake Superior Copper Company, the deed bearing date November 15, 1878, and recorded in said register's office of said county in volume 19 of Deeds, at page 30, described as follows: Beginning at a point three hundred and forty (340) feet north from an iron pin in section line on the south boundary of section twenty-five (25), town. fifty-five (55) north, of range thirty-four (34) west, that point being four hundred and twenty-four (424) east of the southwest corner of said section twenty-five (25), thence running west twenty (20) feet, thence north nineteen (19) degrees thirty-nine (39) minutes west four hundred and sixty-two (462) feet, thence due east seven hundred and fifteen (715) feet, thence south twenty-seven (27) degrees fifty-two (52) minutes west four hundred and ninety-two (492) feet, thence west twenty (20) feet, thence north eighty-five (85) feet, thence west two hundred and ninety (290) feet, thence south eighty-five (85) feet to the place of beginning, containing four and sixty-five one-hundredths (4.65) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described; excepting also from said southwest quarter of said section twenty-five (25) a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to Johnson Vivian, the deed bearing date the 28th day of April, 1879, and recorded in said register's office of said county in volume 20 of Deeds, at page 439, described as follows: Commencing at the southwest corner of said section twenty-five (25), thence north along section line six hundred and sixty and one-tenth (660.1) feet, thence deflecting eighty-nine (89) degrees eight (8) minutes east two hundred and seventy-nine (279) feet seven (7) inches, thence deflecting seventy (70) degrees twenty-one (21) minutes southeasterly three hundred and thirty-nine and eight-tenths (339.8) feet, thence deflecting seventy (70) de-

242 grees twenty-one (21) minutes east twenty (20) feet, thence deflecting ninety (90) degrees south three hundred and forty (340) feet, thence deflecting ninety (90) degrees west four hundred and twenty-four (424) feet to place of beginning, containing five and seventy-eight one-hundredths (5.78) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described; reserving also from said southwest quarter of said section twenty-five (25) a parcel of land leased for ninety-nine years to the Detroit and Lake Superior Copper Company, said lease being of date October 7, 1869, recorded in Liber I of Miscellaneous

Records, in the office of the register of deeds of said county, at page 312, described as follows: Commencing at a point on the north boundary of section thirty-six (36), in township fifty-five (55) north, of range thirty-four (34) west, distant four hundred and twenty-four (424) feet east from the northwest corner of said section thirty-six (36), thence running due north four hundred and twenty-five (425) feet to an iron stake, thence east two hundred and ninety (290) feet to an iron stake, thence south three hundred and twenty-five (325) feet to an iron stake, thence east six hundred and forty-one (641) feet to an iron stake, thence south one hundred (100) feet to the north boundary of said section thirty-six (36), thence west along said section line to the point of beginning, containing four and twenty-nine one-hundredths (4.29) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described; excepting also from said southwest quarter of said section twenty-five (25) a tract of land leased to Joseph Hamel for a period of seventy-five years, the lease being of date March 7th, 1870, recorded in Liber I of Miscellaneous Records, in the office of the register of deeds of said county, at page 336, described as follows: Commencing at the southwest corner of said section twenty-five (25), thence north along the west boundary eighteen hundred
243 and ninety-one (1,891) feet, thence east nine hundred and sixty-three (963) feet, thence south nineteen (19) degrees east two thousand (2,000) feet, thence west eighty (80) feet, thence north nineteen (19) degrees twenty-three (23) minutes east sixty-eight (68) feet eight (8) inches, thence north seventy (70) degrees thirty-seven (37) minutes west sixty (60) feet, thence south nineteen (19) degrees twenty-three (23) minutes west eighty-nine (89) feet nine (9) inches, thence west one hundred and eleven (111) feet, thence north one hundred (100) feet, thence west six hundred and forty-one (641) feet, thence north three hundred and twenty-five (325) feet, thence west two hundred and ninety (290) feet, thence south four hundred and twenty-five (425) feet, thence west four hundred and twenty-four (424) feet to the point of beginning, containing fifty-one and sixty-five one-hundredths (51.65) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with the property of said company herein described; reserving also from said southwest quarter of said section twenty-five (25) a tract leased to William Hosking for a period of twenty-five years, the lease being of date September 7, 1869, recorded in Liber I of Miscellaneous Records, in the office of the register of deeds of said county, at page 450, described as follows: A lot in section twenty-five, town. fifty-five (55) north, of range thirty-four (34) west, near wagon road leading *the* the Pewabic stamp-mill, on which stands a house formerly owned by Thomas Odgers; reserving also from said southwest quarter of said section twenty-five (25) a tract leased to John Phillips for a period of twenty (20) years, the lease being of date June 29, 1872, recorded in Liber I of Miscella-

neous Records, in the office of the register of deeds of said county, at page 587, described as follows: A lot of land on the right side of the road leading from the stamp-mill to the mine, on which his dwelling-house is situated, excepting and reserving also from the west half of said section twenty-five (25) the right of way for the Quincy and Torch Lake railroad, the instrument being of record
244 in volume 29 of Deeds, in the office of the register of deeds of said county, at page 315, the instrument being of date May 23, 1889, described as follows: A tract of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line hereinafter described across the following piece of land, viz: The west half of section twenty-five (25), township fifty-five (55) north, of range thirty-four (34) west, commencing at a point on the west section line of said section twenty-five (25) one hundred and twenty and two-tenths ($120\frac{2}{10}$) feet north of the quarter post, thence south eighty-five (85) degrees twenty-six and one-third ($26\frac{1}{3}$) minutes east thirteen hundred and twelve nine-tenths ($1,312\frac{9}{10}$) feet, thence on a two (2) degree curve to the left two hundred and seventy-eight and five-tenths ($278\frac{5}{10}$) feet, thence north eighty-eight (88) degrees fifty-eight and one-half ($58\frac{1}{2}$) minutes east six hundred and forty-three and four-tenths ($643\frac{4}{10}$) feet, thence on an eight (8) degree curve to the right three hundred and forty-three and four-tenths ($343\frac{4}{10}$) feet to a point on the north-and-south center line of said section twenty-five (25) ninety-six (96) feet south of the center post.

4. Also the east five hundred and seventy-six (576) feet of lot one (1), in section thirty-six (36), of township fifty-five north, of range thirty-four (34) west, described as follows: Commencing at the north quarter post of said section thirty-six (36), thence west along the section line five hundred and seventy-six (576) feet to the east boundary of Hodges' property, thence south along said east boundary to the shore of Portage lake, thence easterly and southeasterly along the shore of Portage lake to the north-and-south center line of said section thirty-six (36), thence north along said center line to the quarter post of beginning.

5. All that portion of lot two (2), in section thirty-six (36), of township fifty-five (55) north, of range thirty-four (34) west, described as follows: Commencing at the meander corner on the section line north of said section thirty-six (36), run east on said section
245 line two hundred and forty-nine (249) feet, thence south at right angles with said section line to the shore of Portage lake, thence northwesterly along said shore to meander corner of beginning.

6. Also the following-described real estate, rights, and easements, situated in said county of Houghton, to wit: The vein or lode known as the Pewabic lode, which outcrops on lands of the Pewabic Mining Company in said county of Houghton, and any other lode or lodes, vein or veins, which outcrop within two hundred (200) feet east of the outcrop of said Pewabic lode where the same lies under the southeast quarter of section twenty-three (23), in township fifty-five (55) north, of range thirty-four (34) west, in the county of Houghton, and the right to mine and work the said Pewabic lode

and such other vein or veins, lode or lodes, being the same property conveyed to the Pewabic Mining Company by Thomas W. Edwards & wife by warranty deed dated the 29th day of October, 1879, and recorded in the register's office of said county of Houghton in Liber 19 of Deeds, on page 353.

7. Also the right to mine by a perpendicular line all minerals lying northwesterly of a line running north fifty-eight (58) degrees west from a point where the Pewabic vein at the surface of the earth crosses the dividing line between the lands of the Pewabic Mining Company and the lands of the Franklin Mining Company, being a part of the same rights and privileges that were conveyed to the Pewabic Mining Company by the Franklin Mining Company by deed dated February 1st, 1862, and recorded September 15th, 1875, in the register's office of said county of Houghton in volume 17 of Deeds, on page 9.

8. Also the east half and the southwest quarter of section ten (10); also the southeast quarter and the southeast quarter of the southwest quarter and the southeast quarter of the northeast quarter of section nine (9), all in township fifty-five (55) north, of range thirty-four (34) west, all constituting and intending herein and hereby to embrace all the assets and property of the Pewabic Mining Company, a Michigan corporation, having its principal office in the State of Michigan, in the said county of Houghton, and all of said assets and property, real and personal, including mining rights and the Pewabic Company's lands above described as leased, and
246 any land or lands not hereinbefore described belonging to the said The Pewabic Mining Company, and any other property, real, personal, or mixed, and any other assets of said company not herein specially described, of every nature, belonging to or appertaining to said company: Provided, however, as is provided in the order of confirmation aforesaid, that nothing herein contained shall be considered as conveying or transferring the claim or claims, if any, against the former directors of said Pewabic Mining Company who are defendants in the cause described in the premises for any sum or sums found to be due from them on the accounting against them directed by said decree of the court aforesaid—

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder or remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the said hereditaments and appurtenances; to have and to hold the premises as before described, with the appurtenances, unto the said party of the second part, its successors and assigns forever.

And the said party of the first part, for themselves, their heirs, executors, and administrators, do covenant, bargain, and agree to and with the said party of the second part, its successors and assigns, that they, the said party of the first part, have not heretofore done, committed, or wittingly or willingly suffered to be done or committed any act, matter, or thing whatsoever whereby the premises hereby

granted or any part thereof is, are, or shall or may be charged or incumbered in title, estate, or otherwise howsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

THOMAS H. MASON. [L. S.]
WILLIAM HART SMITH. [L. S.]
KATE H. SMITH. [L. S.]

Signed, sealed, and delivered in presence of—
W. R. TODD.
GEO. T. ACKERSON.

247 STATE OF NEW YORK, } ss:
City, County, & State of New York, }

On this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and ninety-one, before me, a commissioner for the State of Michigan, personally came the before-named Thomas H. Mason, William Hart Smith, and Kate H. Smith, known to me to be the persons named in and who executed the foregoing instrument, and severally acknowledged the same to be their free act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal this 28th day of March, A. D. 1891.

CHARLES EDGAR MILLS,
[SEAL.] *Commissioner for Michigan in New York,*
115 & 117 *Broadway, N. Y. City.*

STATE OF MICHIGAN, } ss:
County of Houghton, }

OFFICE OF REGISTER OF DEEDS.

I, Peter Primeau, register of deeds of said county, do hereby certify that the annexed is a true and accurate copy of the original record of a deed from Thomas H. Mason, William Hart Smith & wife to the Quincy Mining Company in my custody and keeping as such register; that I have carefully compared said copy with said original record, appearing in Liber 31 of Deeds, on pages 432 to 439, inc., and that the same is a true and accurate copy of said original and of the whole of the same.

In witness whereof I have hereunto set my hand and affixed the seal of the circuit court of said county this 20th day of April, A. D. 1891.

PETER PRIMEAU,
[SEAL.] *Register of Deeds.*

248 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Aldin B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

Affidavit of John B. Fitzpatrick.

I, John B. Fitzpatrick, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, on oath depose and say that I am and during the year eighteen hundred and ninety and long before was a deputy sheriff within and for said county; that as said deputy sheriff I served the original writ, of which an attested copy is hereto annexed, marked Exhibit A; that I made the original return, a copy whereof is indorsed on said copy of the writ; that the facts stated in said return and in said copy thereof are true, and that the goods and chattels in said return and the copy thereof alleged to have been attached by me by putting two keepers in charge of the same consisted of the entire household furniture, carpets, books, pictures, and domestic utensils of the defendants not exempt by law from attachment and situated in the residence of said defendants, No. 127 Dartmouth street, in said Boston, and that said keepers remained in said residence from September 10 til- Oct. 2, 1890, being the period during which said attachment existed,
249 as in said return and copy thereof is more fully set forth.

Witness my hand this twenty-sixth day of March, A. D. 1891.

JOHN B. FITZPATRICK.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *March* 26, 1891.

Then personally appeared the above-named John B. Fitzpatrick and made oath that the foregoing statement by him subscribed is true.

Before me—

[SEAL.] EUGENE B. HAGAR,
Notary Public.

EXHIBIT A.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

[SEAL.] To the sheriffs of our several counties or their deputies, Greeting:

We command you to attach the goods or estate of Alfred A. Mar-

cus and Simeon Marcus, copartners, doing business under the firm name and style of Alfred A. Marcus and Son, in Boston, in said county, and both of said Boston, to the value of seven thousand dollars, and summon the said defendants (if they may be found in your precinct) to appear before our justices of our superior court, to be holden at Boston, within and for our said county of Suffolk, on the first Maonday of October next, then and there in our said court to answer unto Charles A. Morss, of said Boston, in an action of contract, to the damage of said Charles A. Morss (as he says) the sum of seven thousand dollars, which shall then and there be made to appear, with other due damages. And whereas the said plaintiff says that the
250 said defendants have not in their own hands and possession goods and estate to the value of seven thousand dollars aforesaid which can be come at to be attached, but have entrusted to and deposited in the hands and possession of Thomas S. Patterson and John Stetson, both of said Boston, Stanley Paterson and John Paterson, both of the Province of Ontario, in the Dominion of Canada, executors of the will of Thomas S. Paterson, of said Boston, said executors having duly appointed Albert E. Pillbury, of said Boston, as their agent, upon whom service of any legal process against them as such executors shall be of the same legal effect as if made on themselves personally within the Commonwealth, and Mary Ann Marcus, of said Boston, trustees of the said defendants, goods, effects, and credits to the said value, we command you, therefore, that you summon the said supposed trustees (if they may be found in your precinct) to appear before our justices of our said court, to be holden as aforesaid, to show cause, if any they have, why execution to be issued upon such judgement as the said plaintiff may recover against the said defendants in this action (if any) should not issue against their goods, effects, or credits in the hands and possession of the said trustees; and have you there this writ, with your doings thereon.

Witness Robert C. Pitman, Esquire, senior and first justice, at Boston, the second day of September, in the year of our Lord one thousand eight hundred and ninety.

[SEAL.] JOS. A. WILLARD, *Clerk.*

Copy.
Attest: DANIEL W. BULLARD, *Ass't Clerk.*

251 J. B. Fitzpatrick, Esq.

DEAR SIR: You may accept a bond for four thousand dollars to dissolve attachment on this writ.

PERKINS & LYMAN,
Pl'ff's Att'ys.

I certify that the expenses taked in my return on this writ have been incurred and that the same are reasonable.

JOHN B. FITZPATRICK,
Deputy Sheriff.

Sworn to before me—

DAVID A. SMITH,
Justice of the Peace.

Officer's Return.

SUFFOLK, *ss:*

BOSTON, *September* 10, 1890.

By virtue of this writ I this day attached certain goods and chattels as the property of the within-named defendants, and on the same day placed two keepers in charge of the same. Afterwards, on the same day, at 10 minutes past four o'clock p. m., I summoned the within-named trustees, Stanley Paterson and John Paterson, to appear and show cause at court, as within directed, by delivering to Albert E. Pillsbury, Esq., their duly appointed agent, on whom service of process is to be made in this Commonwealth for said trustees, for each an attested copy of this writ. On the same day, at five minutes past five o'clock p. m., I summoned the within-named trustee, John Stetson, to appear and show cause at court, as within directed, by leaving at his last and usual place of abode an attested copy of this writ. September 13, 1890, at 20 minutes past four o'clock p. m., I summoned the within-named trustee, Mary Ann Marcus, to appear and show cause at court, as within directed, by leaving at
her last and usual place of abode an attested copy of this
252 writ. September 19, 1890, I summoned said defendants each
to appear and answer at court, as within directed, by leaving at the last and usual place of abode of each an attested copy of this writ, and by reason of the death of the within-named trustee, Thomas S. Patterson, I was unable to make service of this writ on him. September 16th, 1890, I moved and stored a certain portion of said property in a place of safe keeping in said Boston and stayed further proceedings in reference to moving and storing said property by agreement of the within-named parties, leaving a keeper in charge of the balance of said attached property. October 2nd, 1890, a bond in the sum of four thousand dollars, dissolving said attachment, was filed in the office of the clerk of the court to which this writ is returnable. By direction of the plaintiff's attorneys I withdrew my said attachment and returned all of said attached property to and left it where and as I found it.

JOHN B. FITZPATRICK,
Deputy Sheriff.

Fees.

Attach's, 2.00; services, 2.50; copies, 5.00; labor, 19.00--	28 50
Keepers, 69.00; teaming, 12.00; custody, 23.00; oath, .25--	104 25
Travel ----------	48
	133 23

Exhibit endorsed: No. 5511. Charles A. Morss, pl'ff, — Alfred A. Marcus *et al.*, def'ts. T. S. Paterson *et al.*, trustees. From the office of Perkins & Lyman, 82 Devonshire St.; E. Irving Smith with them.

253 Endorsed: 46. U. S. circuit court, west. dist., of Mich., north. div. In equity. Thomas H. Mason *et al. vs.* Pewabic 17—1340

Mining Co. *et al.* On Marcus' application. Affidavit of sheriff of Suffolk Co., Mass. Filed Apr. 27, 1891. C. L. Fitch, clerk. Dickinson, Thurber & Stevenson, T. B. Dubstan, sol'rs for compl'ts.

254 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

Circuit Court of the United States, Western District of Michigan. In Equity.

MASON *et al.*
vs.
PEWABIC MINING COMPANY *et als.*

Affidavit of John F. Brown.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Municipal Court of the City of Boston for Civil Business.

MARCH 20, 1891.

I, John F. Brown, certify that I am the clerk of said municipal court of the city of Boston for civil business, and that it appears on the records of said court that from the 22 day of December, A. D. 1888, to the nin-teenth day of March, A. D. 1891, the judgement creditors in the following-named actions have severally made application to said court for a certificate authorizing the arrest of
255 Alfred A. Marcus, judgement debtor; that in pursuance of said applications notices have been duly served on said Alfred A. Marcus to appear before said court for examination, as provided in chapter 162 of the Public Statutes of said Commonwealth relating to poor debtors, and the acts amendatory thereof and supplementary thereto; that certificates authorizing the arrest of the said Marcus aforesaid have issued in many of the following-named actions, but it does not appear that the oath for the relief of poor debtors has been administered to him.

List of Actions.

No.	Judgement creditors.		Judg't debtors.	Am't of executions.
274	Grace	*vs.*	A. A. Marcus *et al.*	2,757 95
303	Mass. Title Ins. Co.	*vs.*	Same	1,029 87
428	Delano	"	Same	411 64
534	Hall	"	A. A. Marcus	2,044 12
565	Fowler	"	A. A. Marcus *et al.*	456 98
751	Dillaway	"	A. A. Marcus	6,001 96
1255	Sharp	*vs.*	A. A. Marcus *et al.*	218 13
1256	Sharp	"	Same	112 30
1257	Sharp	"	Same	112 53
1262	Sharp	"	Same	613 64
1339	Morss	"	Same	618 50
1390	Cochnower	"	A. A. Marcus	299 53
1588	Hayden	"	A. A. Marcus *et al.*	257 38
1650	Morss	"	Same	618 85
1709	Carey	"	Same	154 80
1728	Horgan *et als.*	*vs.*	Same	105 46
1813	Murray	*vs.*	Same	952 64
1928	Grinburg *et al.*	*vs.*	Same	803 35
2111	Wellington Coal Co.	*vs.*	A. A. Marcus	49 85
2260	Stevens	*vs.*	A. A. Marcus *et al.*	225 87
2388	Boardman	"	Same	102 09
2658	Sharp	"	Same	804 17
2698	Thomson	"	A. A. Marcus	111 90
2798	Dillaway	"	A. A. Marcus	5,501 96
2966	Bailey	"	A. A. Marcus	141 71
3103	Hollings *et al.*	*vs.*	A. A. Marcus	423 60
3145	Shreve, Crump & Low Co.	*vs.*	A. A. Marcus	848 63
3189	Thomson	*vs.*	A. A. Marcus *et al.*	174 40
3206	Stevenson	*vs.*	Same	126 14

[SEAL.] JOHN F. BROWN, *Clerk.*

256 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *Mar.* 20, 1891.

Then personally appeared the above-named John F. Brown and made oath that the foregoing statement by him subscribed is true.

Before me—

[SEAL.] EUGENE B. HAGAR,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *Mar.* 25, 1891.

Then personally appeared the above-named John F. Brown and made oath that the foregoing statement by him subscribed is true.

Before me— EUGENE B. HAGAR,

[SEAL.] *Notary Public.*

Endorsed: 46. U. S. circuit court, west. dist. of Mich., northern div. In equity. Thomas H. Mason *et als. vs.* Pewabic Mining Co. *et als.* On Marcus appli. Affidavit to clerk of municipal court, Suffolk Co. Dickinson, Thurber & Stevenson, T. B. Dunstan, sol'r- for compl'ts. Filed Apr. 27, 1891. C. L. Fitch, clerk.

257 [Endorsed:] Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus to intervene. Affidavit of Charles H. Allen. Filed Apr. 27, 1891. C. L. Fitch clerk.

United States of America. In the circuit court of the United States for the western district of Michigan, northern division. Thomas H. Mason, William Hart Smith, and Sullivan Ballou, complainants, *vs.* The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, defendants. Circuit court of the United States, western district of Michigan. In equity. Mason *et al. vs.* Pewabic Mining Co. *et als.* Affidavit of Charles W. Kimball.

A list of undischarged attachments in actions against Alfred A. Marcus as appears on the records of attachments of real estate in the county of Suffolk, Commonwealth of Massachusetts, since the first day of January, 1889.

Defendant.	Plaintiff.	Date.	Amount.
Alfred A. Marcus	W. C. Hunneman	March 12, '89	$900
Do.	Edmund S. Sparrow	" 27,	250
Do.	Edward G. Shattuck	Sept. 12,	10,000
Do.	J. W. Shillings	Dec. 4,	2,500
258 Do.	H. S. Crowell	Dec. 5,	1,000
Do.	Hugh Carey	Jan. 3, 1890	300
Do.	H. M. White	Jan. 6,	1,500
Do.	Hugh Carey	Jan. 22,	200
Do.	A. C. Wellington Coal Co.	Jan. 24,	100
Do.	Otto Sharp	Mar. 24,	1,000
Do.	" "	" 25,	950
Do.	H. J. Stevens	Apr. 18,	500
Do.	D. M. Demmon	May 15,	10,000
Do.	J. A. Coran	" 15,	3,000
Do.	Otis Shepard	June 23,	75,000
Do.	W. R. Clark	Dec. 22,	6,000
Do.	J. W. Bailey	" 27,	600
Do.	C. C. Maybury	Feb. 13, 1891	1,000
Do.	C. Adler	Mar. 19,	1,000

SUFFOLK REGISTRY OF DEEDS,
BOSTON, *March* 20, 1891.

I certify that the foregoing is a true list of attachments against Alfred A. Marcus, as above stated.

Attest: CHARLES W. KIMBALL,
Ass't Reg. of Deeds.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *Mar.* 20, 1891.

Then personally appeared the above-named Charles W. Kimball and made oath that the foregoing statement by him subscribed is true.

Before me—
[SEAL.] EUGENE B. HAGAR,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *Mar.* 25, 1891.

Then personally appeared the above-named Charles W.
259 Kimball and made oath that the foregoing statement *dy* him subscribed is true.

Before me—
[SEAL.] EUGENE B. HAGAR,
Notary Public.

Endorsed: 46. U. S. circuit court, western district of Michigan, north. div. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* On Marcus' application. Affidavit of Kimball, register of deeds, Suffolk Co., Mass. Filed Apr. 27, 1891. C. L. Fitch, clerk. Dickinson, Thurber & Stevenson, T. B. Dunstan, sol'rs for compl'ts.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

I, Alfred A. Marcus, of Boston, in said county, petitioner to intervene in the action of Mason *et al. vs.* The Pewabic Mining Company *et als.*, now pending in the United States circuit court for the northern district of Michigan, do, on oath, depose and say that I am the owner of a large number, to wit, three thousand (3,000), shares of the stock of the Pewabic Mining Company; that I have taken a great interest in the said property and fully intended to be present
260 at the sale and to make a bid for said property, and have endeavored to keep myself informed as to all movements in reference to the sale of said property; that the first knowledge which I received that said sale of said property would take place on Saturday, January 24, 1891, was through Ruben E. Demmon, of said Boston, who informed me on Friday, January 23, 1891, that the sale was to take place the following day; that I immediately, upon being informed by the said Demmon of the intended sale of said prop-

erty, sent a telegraphic message to the special master in the said case, notifying him that I had just learned of said intended sale; that I have been engaged in business in Boston for upwards of twenty years, and have had very numerous and very large business dealings; that I was fully able to furnish the amount required to effect the purchase of said property up to the amount of one million dollars ($1,000,000); that I am an orthodox Jew, and as such have never done business of any kind on the seventh day of the week, nor permitted any business to be done in my behalf on that day, and could not conscientiously do so; that said sale was on the seventh day of the week; that for that reason I requested the master by said telegram to postpone the sale at my expense; that learning on Monday, January 26, that said special master had disregarded my communication and had permitted said sale to take place, I sent to him an offer by telegraph of $721,000 for the property, and immediately consulted counsel and took all possible measures to protect my rights and to obtain the vacating of said sale, and
261 that I have secured the sum of $800,000, which shall be bid as a starting bid for said property; that I am thoroughly familiar with the property and believe that the same is worth more than $800,000.

ALFRED A. MARCUS.

Subscribed and sworn to this twenty-seventh day of March, 1891, before me—

[SEAL.] HENRY L. MITCHELL,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S OFFICE, BOSTON, *Apr.* 24, 1891.

I hereby certify that at the date of the attestation hereto annexed Henry L. Mitchell was a notary public for the county of Suffolk, in the said Commonwealth, duly commissioned and constituted; that to his acts and attestations as such full faith and credit are and ought to be given in and out of court; that as such notary public he is by law authorized to administer oaths and take acknowledgements of deeds and other instruments, and that I believe his signature to the annexed attestation is genuine.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

Endorsed: No. 46. Equity. Circuit court of the United States, western district of Michigan. Mason *et al. vs.* Pewabic Mining Company *et als.* Petition of Alfred A. Marcus for leave to intervene. Affidavit of Alfred A. Marcus. Filed Apr. 27, 1891. C. L. Fitch, clerk.

262 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Penabic Copper Company, Defendants.

Suit pending in said court, at the city of Grand Rapids, on this 27th day of April, one thousand eight hundred and ninety-one, before the Honorable Henry F. Severens, district judge, at chambers.

The petition of Alfred A. Marcus, praying, among other things, that he may be allowed to intervene in said cause and object to the report of sale of the special master in said cause; that the sale of the property of the Pewabic Mining Company, made on January 24th, 1891, be declared null and void and be set aside, and that the said special master be ordered to offer said property for sale in the manner decreed by the court at the expense of the said Marcus, coming on to be heard, on read- and filing the affidavits submitted in behalf of the said Alfred A. Marcus, together with a cer-
263 tain circular letter issued by the Quincy Mining Company and certain letters addressed to R. M. Morse, Jr., filed with said affidavits, and which were treated as evidence at the hearing, and after reading and filing the affidavits submitted in behalf of Thomas H. Mason and William Hart Smith, in opposition to the prayer of the petition, and after hearing R. M. Morse, Jr., C. E. Hellier, and R. C. Ostrander, counsel for said Marcus, in support of said petition, Alfred Sussell and Don M. Dickinson opposed, in behalf of Thomas H. Mason and William Hart Smith, it is considered by the court and ordered and adjudged that the petition of said Marcus be denied and that the same be dismissed with ten dollars costs.

H. F. SEVERENS,
Dist. Judge.

(Endorsed:) The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Order denying petition of Alfred A. Marcus. Filed Apr. 27, 1891. C. L. Fitch, clerk.

264 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

Suit pending in said court, at the city of Grand Rapids, on this 27th day of April, one thousand eight hundred and ninety-one, before the Honorable Henry F. Severens, district judge, at chambers.

The application of the said defendant, The Pewabic Mining Company, to vacate and set aside a sale of the property of said defendant made by the special master, Peter White, and to order a resale of said property coming on to be heard, after hearing Mr. R. C. Ostrander, counsel for the defendant The Pewabic Mining Company, in support of said application, and Alfred Russell and Don M. Dickinson opposed, and after consideration of the said application, it is ordered and adjudged that the said application be denied and that the same be dismissed.

H. F. SEVERENS,
Dist. Judge.

265 Endorsed: The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Order denying petition of Pewabic Mining Co. to open sale. Filed Apr. —, 1891. C. L. Fitch, clerk.

266 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden D. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company.

AT CHAMBERS, *April 30th*, 1891.

The appeal of the above-named defendants to the Supreme Court of the United States from the order confirming the master's sale and his report thereof having been and on March 17, 1891, duly allowed, on application of said defendants to fix the penalty of the bond to be given on said appeal and for superseding the order appealed from, it is ordered that the penalty of said bond be, and the

same hereby is, fixed at the sum of $200,000.00, with sureties to be approved by the court.

H. F. SEVERENS,
Dist. Judge.

(Endorsed:) The circuit court of the United States for the western — of Michigan, northern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Order fixing bond on appeal. Filed Apr. 30, 1891. C. L. Fitch, clerk.

267 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden D. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company.

Now comes the defendant The Pewabic Mining Company and hereby claims the benefit of an appeal to the Supreme Court of the United States from the order made in said cause by said court confirming the sale made by the special master on the 24th day of January, 1891, and confirming the said special master's report of said sale; which said confirming order became final on the 27th day of April, A. D. 1891.

F. A. BAKER,
STONE & GRAY,
Sol'rs for the Defendant.

(Endorsed:) Circuit court of U. S., W. dist. Mich., N. div. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Co. *et al.* Claim of appeal. Filed June 3, 1891. F. M. Moore, dep. clerk. F. A. Baker and Stone & Gray, sol'rs for the defendant.

268 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden D. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company.

Now comes the defendant The Pewabic Mining Company and hereby claims the benefit of an appeal to the Supreme Court of the United States from the order made in said cause on the 27th day of April, 1891, overruling and denying the motion and petition of this

defendant to vacate and set aside the sale of the mining property of defendant and to order a resale of said property.

F. A. BAKER &
STONE & GRAY,
Sol's for the Defendant.

(Endorsed:) Circuit court of U. S., W. dist. Mich., N. div. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Co. *et al.* Claim of appeal. Filed June 3, 1891. F. M. Moore, dep. clerk. F. A. Baker and Stone and Gray, sol'rs for the defendant.

269 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company.

JUNE 3, A. D. 1891.

To the judge of said court:

The defendant The Pewabic Mining Company having claimed an appeal to the Supreme Court of the United States from an order made on April 27, 1891, by said court in said cause denying the application of said defendant for an order setting aside the sale of the defendant's property and for a resale thereof, application is hereby made for an order allowing said appeal, determining the penal sum of the bond to be given on said appeal, and that said appeal may operate as a supersedeas.

F. A. BAKER,
STONE & GRAY,
Sol'rs for Defendants.

To Dickinson, Thurber & Stevenson, sol'rs for complainants.

GENTLEMEN: You will please take notice that an application, of which the above is a true copy, has been presented to the Hon. Henry F. Severens, district judge, and that we are now awaiting the action of said judge thereon.

Detroit, June 5, 1891.

F. A. BAKER,
STONE & GRAY,
Sol'rs for Defendant.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Fred. A. Baker, being duly sworn, deposes and says that on the 5th day of June, 1891, he served a notice, of which the above and foregoing is a true copy, on Dickinson, Thurber & Stevenson, solic-

itors for several complainants, by leaving the same at their office with James H. Cullen, the clerk in charge thereof.

270 FRED. A. BAKER.

Subscribed and sworn to before me this 5th day of June, 1891, at Detroit, in said district.

LELAND B. CASE,
Notary Public, Wayne County, Mich.

Endorsed: The circuit court of the U. S. for W. D. Mich., N. D. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Proof of service of notice of application for appeal. Filed August 10, 1891. F. M. Moore, dep. clerk. F. A. Baker, Stone & Gray, sol'rs for def't.

271 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden D. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company.

JUNE 3RD, A. D. 1891.

To the judge of said court:

The defendant The Pewabic Mining Company, above named, having claimed an appeal to the Supreme Court of the United States from an order entered in said cause confirming the master's sale of property January 24, 1891, and the master's report of said sale, which said confirming order became absolute on April 27, 1891, application is hereby made for an order allowing said appeal, determining the penal sum of the bond to be given on said appeal, and that said appeal may operate as a supersedeas.

F. A. BAKER,
STONE & GRAY,
Solicitors for Defendant.

The for-going claim of appeal is hereby allowed and the penalty of the bond thereon fixed at $150,000.

Dated June 12, 1891.

H. F. SEVERENS,
District Judge.

(Endorsed:) (46.) Circuit court of the U. S., W. dist.
272 Mich., N. div. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Co. *et al.* Application for order allowing appeal. Filed July 25, 1891. C. H. Fitch, clerk. F. A. Baker and Stone & Gray, solicitors for the defendant.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden D. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company.

JUNE 3, A. D. 1891.

To the judge of said court:

The defendant The Pewabic Mining Company having claimed an appeal to the Supreme Court of the United States from an order made on April 27, 1891, by said court in said cause denying the application of said defendant for an order setting aside the sale of the defendant's property and for a resale thereof, application is hereby made for an order allowing said appeal, determining the penal sum of the bond to be given on said appeal, and that said appeal may operate as a supersedeas.

F. A. BAKER,
STONE & GRAY,
Solicitors for Defendant.

The for-going claim of appeal is hereby allowed and the penalty of the bond thereon fixed at the sum of $150,000.

Dated June 12th, 1891.

H. F. SEVERENS,
Dist. Judge.

273 (Endorsed:) Circuit court of the U. S., W. dist. Mich., N. div. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Co. *et al.* Application for order allowing appeal. Filed July 25, 1891. C. H. Fitch, clerk. F. A. Baker and Stone & Gray, sol's for the defendant.

Circuit Court of the United States, Western District of Michigan.

THOMAS H. MASON *et al.*
v.
THE PEWABIC MINING COMPANY *et als.*

Affidavit of Daniel L. Demmon.

I, Daniel L. Demmon, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, on oath say that I have signed as surety a supersedeas bond in the penal sum of one hundred fifty thousand ($150,000) dollars in the above-named action; that I am an officer in and a large holder of the stock of copper mining companies; that I own real eastate in said Commonwealth of the value of not less than two hundred thousand dollars above all incumbrances, and that I am worth above all my liabilities at least

two hundred thousand dollars, and that I am able to respond and will respond to any obligation which may be incurred by me on account of said bond.

DANIEL L. DEMMON.

[SEAL.] COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *July 22nd*, 1891.

274 Then personally appeared the above-named Daniel L. Demmon and made oath that the for-going affidavit by him subscribed is true.

Before me—

FRED. W. BROWN,
Notary Public.

(Endorsed:) Circuit court of the United States, western district of Michigan, northern division. In equity. Thomas H. Mason *et al.* *v.* Pewabic Mining Company *et als.* Affidavit of Daniel L. Demmon. Filed July 25, 1891. C. H. Fitch, clerk.

Circuit Court of the United States, Western District of Michigan, Northern Division, in the Sixth Circuit.

THOMAS H. MASON *et al.*
v.
THE PEWABIC MINING COMPANY *et als.* } In Equity.

In the matter of an application by the Pewabic Mining Company to the Honorable Horace Gray, associate justice of the Supreme Court of the United States for the first circuit, for his approval of a supersedeas bond.

Affidavit of Thomas H. Talbot.

275 From early in 1887 I have been counsel for said Pewabic Mining Company and had the direction of its defence, which of late has been conducted by lawyers in Michigan, with whom my communication has been mostly by mail. June 15th, 1891, I learned by letter of the allowance by Judge Severens on June 12 of appeals from his action of April twenty-seventh and of his fixing the penalty of a supersedeas bond, and on the same day I wrote to gentlemen in Michigan—one in the upper peninsula, known to be friendly to the Pewabic Mining Company and interested in its controversy—to ascertain whether they would sign the supersedeas bond as sureties.

When this correspondence, which, somewhat to my disappointment, resulted in those gentlemen's declining to become sureties, had closed I immediately applied to Mr. Charles A. Prince, who consented to consider the matter, and his signature as a cosurety with Mr. Demmon was procured by July 1.

On that day, in conference of counsel, it was arranged that I

should go to Detroit on the next day to submit the bond to Mr. Justice Brown, whose approval could make a supersedeas operative upon the decree of March 2 (if such was still in force), as well as upon that of April 27. Detroit would be reached soon after nine o'clock on July 3, a business day, and any removable objections to the bond which Mr. Justice Brown should have pointed out could have been communicated to Boston on that day, and a new bond acceptable to him could have been executed in Boston and forwarded, so as to have reached Detroit by Monday, July 6, during all of which last day the ordinary power even of a subordinate judge to approve a bond continued.

On July 1 a telegram was sent to the company's counsel, in Detroit, to arrange with Mr. Justice Brown for the presentation of this bond and to communicate if there was any difficulty in thus arranging. No answer to this telegram was received down to the
276 time when I left Boston in the fast train for the West, on July 2, but on reaching Detroit on the morning of July 3 I learned that Mr. Justice Brown had left for Europe, and in fact a despatch to that effect had been received in Boston that same morning.

As it was still within the authority of the judge who had acted in this case—Hon. H. F. Severens, district judge for the western district—to raise a supersedeas of his action of April 27, I determined to endeavor to submit the bond to him. Telegrams were at once sent to his residence, at Kalamazoo, and to his place of holding court, Grand Rapids, to ascertain where he was, but no answers were received until the afternoon train left for each of those places. I took the train to Kalamazoo, where I thought Judge Severens would return that night, at the close of the working week.

Business was closed in Boston before the train reached Kalamazoo—five o'clock, St. Louis time—and Judge Severens did not reach home for some hours thereafter. I saw him about nine o'clock the next morning, and by his appointment his interview with me was later, closing about ten o'clock.

After reading the bond carefully he said that he could not approve it in that form, because it did not specify under which of the appeals taken by the Pewabic Mining Company it was to operate, and also that it did not recite that the complainants Mason and Smith became purchasers of the property sold Jan. 24. He examined the affidavits as to the sufficiency of the sureties and expressed himself satisfied therewith.

He then suggested that a new bond might be executed in Detroit on Monday then next, when he was to be in that city, and that it could be submitted to him for his approval. To bring this about he suggested that I should at once telegraph to Boston and procure the attendance of the requisite parties in Detroit on Monday.
277 This suggestion was made at Kalamazoo, a hundred and forty miles beyond Detroit, about ten o'clock on Saturday morning, July 4th, not a business day. Where any one of the parties signing the bond or any one of their Boston counsel then was I did not know, and it seemed to me then, as I have since ascertained it actually was, impracticable, by telegraphing, to procure the three

signers of the bond to take at Boston the train of 2.15 Sunday afternoon, July 5, so as to be in Detroit during business hours on July 6. I stated this impracticability to Judge Severens. The judge suggested that there was ample time to bring it about; to which I replied that there might be on any other Saturday than this, but that on this Saturday, being a holiday, the thing could not be accomplished, and that the resort of my client, the appel-ant, must be to the authority conferred by the statute upon a justice of the Supreme Court to approve a supersedeas bond after the power of a subordinate judge to do so had expired.

Upon my return from Michigan I drew a new bond in compliance with the requirements of Judge Severens. His suggestions of clerical errors I adopted, so far as verification justified them, and the fact of purchase and the names of the purchasers as well as the specifications of the decree appealed from now appear in the bonds which are submitted for approval.

THOMAS H. TALBOT.

[SEAL.] Personally appeared the above-described Thomas H. Talbot and made oath that the above statement by him subscribed is true.

Before me—

FRED. W. BROWN,
Notary Public.

(Endorsed:) Circuit court of the United States, western district of Michigan, northern division. In equity. Thomas H. Mason
278 *et al. v.* Pewabic Mining Company *et als.* Affidavit of Thomas H. Talbot. Filed July 25, 1891. C. H. Fitch, clerk.

Circuit Court of the United States, Western District of Michigan.

THOMAS H. MASON *et al.*
v.
PEWABIC MINING COMPANY *et als.*

Affidavit of Charles A. Prince.

I, Charles A. Prince, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, on oath say that I have signed as surety a supersedeas bond in the penal sum of one hundred fifty thousand ($150,000) dollars in the above-named action; that I am and have been for many years in practice in said Boston as an attorney-at-law, and that I am a director and the general counsel of the New York and New England Railroad Company; that I own real estate in said Commonwealth of the value of not less than one hundred fifty thousand dollars, and that I am worth above all my liabilities at least one hundred fifty thousand ($150,000) dollars, and that I am able to respond and will respond to any obligation which may be incurred by me on account of said bond.

CHARLES A. PRINCE.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

BOSTON, *July 2nd*, 1891.

[SEAL.] There personally appeared Charles A. Prince and made oath that the for-going statement by him subscribed is true.

Before me—

FRED. W. BROWN,
Notary Public.

279 (Endorsed:) Thomas H. Mason *et al. v.* Pewabic Mining Company *et als.* Affidavit of Charles A. Prince. Filed July 25, 1891. C. H. Fitch, clerk.

Know all men by these presents that we, the Pewabic Mining Company, as principal, and Daniel L. Demmon and Charles A. Prince, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, as sureties, are held and *finally* bound unto Thomas H. Mason and William Hart Smith, who are partners in trade, doing business under the name and style of Mason and Smith, and Sullivan Ballou, all of the city, county, and State of New York, in the full and just sum of one hundred and fifty thousand dollars, to be paid to the said Mason and Smith as aforesaid and said Ballou, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourteenth day of July, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a term of the circuit court of the United States for the western district of Michigan, northern division, in a suit in equity depending in said court between said Mason and Smith as aforesaid and said Ballou as plaintiffs and said Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company as defendants, a sale of the property of said Pewabic
280 Mining Company was made on the twenty-fourth day of January, A. D. 1891, at which sale said Mason and Smith became purchasers of said property, and by order of said court said sale to said Mason & Smith was, on the second day of March, A. D. 1891, confirmed; and again, on the twenty-seventh day of April, 1891, a petition of the said Pewabic Mining Company and of one Alfred A. Marcus that said sale might be set aside and said property might be sold again being denied, said order of confirmation was made final; and the said Pewabic Mining Company have obtained an appeal to remove said cause to the Supreme Court of the United States to reverse the final decree of confirmation in said suit, and a citation directed to the said plaintiffs, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the twenty-second day of August, A. D. 1891:

Now, the condition of the above obligation is such that if the said appellants shall prosecute their said appeal to effect and answer all costs of the suit and the sum recovered for the use and detention of

the property and just damages for delay and costs and interest on the appeal if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

PEWABIC MINING COMPANY,
By THOMAS H. PERKINS, *President*, [SEAL.]
By D. L. DEMMON, *Treasurer*. [SEAL.]
D. L. DEMMON.
CHARLES A. PRINCE.

Signed, sealed, and delivered in presence of—
CHARLES E. HELLIER,
Witness to T. H. P., pres.
" " D. L. D., treas.
" " D. L. D.
" " C. A. P.

Bond and sureties approved, and it is ordered that this bond
281 operate as a supersedeas, and that this bond be transmitted to the clerk of the circuit court of the United States for the northern district of Michigan, northern division thereof.

HORACE GRAY,
Associate Justice of the Supreme Court of the United States.

(Endorsed:) Circuit court of the United States, western district of Michigan, northern division. In equity. Thomas H. Mason *et al. v.* Pewabic Mining Company *et als.* Supersedeas bond. Filed July 25, 1891. C. H. Fitch, clerk.

Know all men by these presents that we, the Pewabic Mining Company, as principal, and Daniel L. Demmon and Charles A. Prince, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, as sureties, are held and firmly bound unto Thomas H. Mason and William Hart Smith, who are partners in trade, doing business under the name and style of Mason and Smith, and Sullivan Ballou, of the city, county, and State of New York, in the full and just sum of one hundred and fifty thousand ($150,000) dollars, to be paid to the said Mason, Smith, and Ballou as aforesaid, their certain attorney, executors, and administrators; — jointly and severally by these presents.

Sealed with our seals and dated this 23rd day of July, in the year of our Lord one thousand eight hundred and ninety-one.

282 Whereas lately, at a term of the circuit court of the United States for the western district of Michigan, northern division, in a suit in equity depending in said court between said Mason, Smith, and Ballou as plaintiffs and said Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company as defendants, a sale of the property of the said Pewabic Mining Company was made on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety-one, and at said sale said Mason and Smith became purchasers of said property, and

on the second day of March thereafter and in said year now current said sale was confirmed by order or decree of court against said defendants, and the said defendants, except said Billings and Buttrick, who have deceased, have obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse said decree in the said suit, and a citation directed to the said plaintiffs, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the twenty-second day of August, A. D. 1891:

Now, the condition of the above obligation is such that if the said appellants shall prosecute their appeal to effect and answer all costs of suit and the sum recovered for the use and detention of the property and just damages for delay and costs and interest on appeal if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

PEWABIC MINING COMPANY,
By HENRY J. STEVENS, [SEAL.]
President pro tem. Pewabic Mining Company,
283 By D. L. DEMMON, *Treasurer.* [SEAL.]
D. L. DEMMON.
CHARLES A. PRINCE.

Signed, sealed, and delivered in presence of—
C. E. HELLIER, to H. J. S.
" D. L. D., treas.
" D. L. D.
to C. A. P.

Bond and sureties approved, and it is ordered that this bond operate as a supersedeas, and that this bond and the affidavit of Thomas H. Talbot, containing the application for the approval of this bond, and the affidavits of Daniel L. Demmon and Charles A. Prince upon said application and upon the application for the approval of another appeal bond in this cause, dated July 14th, 1891, be transmitted to the clerk of the circuit court of the United States for the western district of Michigan, northern division thereof.

HORACE GRAY,
Associate Justice of the Supreme Court of the United States.

(Endorsed:) Circuit court of the United States, western district of Michigan. In equity. Mason *et als. vs.* Pewabic Mining Company *et als.* Supersedeas bond. Filed July 25, 1891. C. H. Fitch, clerk.

284 Equity.

THE UNITED STATES OF AMERICA:

To Thomas H. Mason and William Hart Smith, partners and doing business under the firm name of Mason and Smith, and Sullivan Ballou, all of the city, county, and State of New York, Gre-ting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on

the twenty-second of August next, pursuant to an appeal claimed and allowed by the circuit court of the United States for the western district of Michigan, northern division thereof, in a cause in equity wherein The Pewabic Mining Company are appellants and you are defendant-, to show cause, if any there be, why the decree rendered against the said appellants shouls not be reversed and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Horace Gray, associate justice of the Supreme Court of the United States, this 23d day of July, in the year of our Lord one thousand eight hundred and ninety-one.

(Signed) HORACE GRAY,
Justice Supreme Court U. S.

The appeal from the order on decree of Mar. 2, 1891, will not be prosecuted or perfected by the appellants other than the Pewabic Mining Cempany, as appears in a paper which I send to Mr. Ostrander for filing in court; therefore their names are not in this citation.

THOMAS H. TALBOT,
Counsel for Those Other Defendants.

285 UNITED STATES OF AMERICA, } ss:
Eastern District of Michigan, }

Walter Barlow, of Detroit, in said district, being duly sworn, deposes and says that on the first day of August, 1891, he served a citation, of which the within is a true copy, on Dickinson, Thurber & Stevenson, solicitors for said appellees in the court below, by delivering the same to Henry F. Thurber, one of the members of said firm, at their office, in said city of Detroit.

WALTER BARLOW.

Subscribed and sworn to before me, at Detroit, in said district, on the first day of August, 1891.

JNO. GRAVES,
[SEAL.] *U. S. Commissioner, East. Dist. of Mich.*

Endorsed: Supreme Court United States. In equity. Thomas H. Mason *et al. vs.* Pewabic Mini-g Co. Citation and proof of service. Filed Aug. 11, 1891. F. M. Moore, dept. clerk.

286 THE UNITED STATES OF AMERICA:

To Thomas H. Mason and William Hart Smith, partners and doing business under the name and style of Mason & Smith, and Sullivan Ballou, all of the city, county, and State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the twenty-second of August next, pursuant to an appeal claimed and allowed by the circuit court of the United States for the western district of Michigan, northern division thereof, in a cause

in equity wherein The Pewabic Mining Company are appellants and you are defendants, to show cause, if any there be, why the decree rendered against the said appellants should not be reversed and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Horace Gray, associate justice of the Supreme Court of the United States, this 23d day of July, in the year of our Lord one thousand eight hundred and ninety-one.

(Signed) HORACE GRAY,
Justice Supreme Court U. S.

UNITED STATES OF AMERICA, *Eastern District of Michigan*, } ss:

Walter Barlow, of the city of Detroit, in said district, being duly sworn, deposes and says that on the first day of August, 1891, he served a citation, of which the within is a true copy, on Dickinson, Thurber & Stevenson, solicitors for said appelle-s in the court below, by delivering the same to Henry F. Thurber, one of the members of said firm, in person, at their office, in said city of Detroit.

WALTER BARLOW.

Subscribed and sworn to before me, at Detroit, in said district, on the first day of August, 1891.

JNO. GRAVES,
[SEAL.] *U. S. Commissioner, East. Dist. of Mich.*

Endorsed: Supreme Court United States. In equity. Thomas H. Mason *et als. vs.* Pewabic Mining Co. Citation and proof of service. Filed Aug. 11, 1891. F. M. Moore, dept. clerk.

287 TESTIMONY FILED BY SPECIAL MASTER PETER WHITE.

288 *Synopsis of Contents of Mine Books of the Pewabic Mining Company.*

Mining expense, April 1, 1883, to Dec. 31st.

To stoping 2,374.348 fms.	$30,450 47	
" drifting 1,906.2 feet	24,253 42	
" drifting 410.1 feet cross-cuts	5,172 52	
" sinking 281.8 feet shaft	4,724 34	
" sinking 256.2 feet winzes	4,285 48	
" extra labor on contract	1,247 72	
" sundry labor, as per time book	34,231 48	
" material or supplies used	8,947 62	
" 5,905 cords wood burnt	19,189 61	
" paid Concord M'g Co. for use of boiler 6 mos.	60 00	
" teaming and hauling water	1,475 00	
" sundry items, survey, platting, &c.	294 26	
By labor charged miners on contract		854 42

By profit on supplies sold miners on contract			11,863 79
" sundry items, labor & supplies			378 58
" transfer from hospital acc't			900 00
" material erroneously charged m'g expense in March			918 90
2nd hand:			
2,400 ft. wire rope sold F. M'g Co.	480 00		
2nd hand:			
2,900 ft. wire rope sold F. M'g Co.	550 00		
			1,030 00
To wood, coal, supplies, labor, &c., ch'g'd F. M'g Co., part of expense for manipulating 554 tons rock			490 82
" 9 mos. use of man-engine, ch'g'd F. M'g Co., at 75			675 00
" expense for 9 mos.			117,220 41
		$134,331 92	$134,331 92

Min'l for year	1,430,315	Ingot for year	1,171,847
Less Jan., Feb., and March	405,561	Less Jan., Feb., and March	328,641
	1,024,754		843,206
Or $512\frac{754}{2000}$ tons.			$421\frac{1206}{2000}$ tons.

Exhibit No. 3.

(Endorsed:) The circuit court *for* the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *vs.* Pewabic Mining Co. Statement of mining expenses. Filed Aug. 26, 1890. C. L. Fitch, clerk.

289 *Surface Expense, April 1st to Dec. 31st, 1883.*

To labor, as per time book		$4,876 75	
supplies or material used		1,044 22	
cleaning mass and copper by F. M'g Co.		118 50	
rents paid back		70 50	
bills shoeing, harness, repairs, teaming, &c., &c.		1,552 69	
143½ cords wood		465 56	
By house rents			3,274 74
ground rents			125 00
teaming and labor ch'g'd mining ex. and other parties			1,572 33
sundry items			205 52
expense for 9 mos.			2,950 63
		$8,128 22	$8,128 22

Stamp-Mill Expense.

To labor, as per time book	$10,092 16	
3,466 cords wood burnt	11,264 49	
supplies used	2,888 61	
By stamping 1,150 ton-rock for H. M'g Co.		775 60
stamping 554 " " " F. M'g Co.		498 60
stamping 1,000 " " " H. M'g Co.		740 00
scrap-iron, brass chips, &c., sold, and boiler flue		443 80
buil. ex.		21,787 26
	$24,245 26	$24,245 26

290 *Tram-Road Expense, April 1st to Dec. 31st, 1883.*

To labor, as per time book	$3,295 58	
supplies, including fuel	1,060 51	
rent of locomotive paid F. M'g Co.	240 00	
By running 554 tons rock to mill for F. M'g Co.		72 02
1 rock car sold		75 00
tram-road expense		4,449 07
	$4,596 09	$4,596 09

Rock-House Expense.

To labor, as per time book	6,252 03	
supplies used	318 01	
By handling 554 tons rock for F. M'g Co.		83 10
sund.		1 00
rock-house expense		6,485 94
	$6,570 04	$6,570 04

General Expense.

To agents and watchman's salaries	2,269 59
taxes year 1883	1,273 66
insurance	921 50
retainers and sundry items	160 80
tolls on $616\frac{1}{2}\frac{3}{0}\frac{3}{0}\frac{7}{0}$ tons ingot copper	185 00
	$4,810 50

Office Expense.

To clerks' salaries	1,280 00	
stationery, fuel, oil, &c.	223 95	
telegrams, telephone, rent, and sundry items	118 98	
By commissions on collections		244 91
office expense		1,378 02
	$1,622 93	$1,622 93

291 *Summary Disbursements and Receipts from April 1st to Dec. 31st, 1883.*

Mining expense	$134,331 92	$17,111 51
Surface "	8,128 22	5,177 59
Stamp-mill expense	24,245 26	2,458 00
Tram-road "	4,596 09	147 02
Rock-house expense	6,570 04	84 10
General expense	4,810 50	
Office expense	1,622 93	244 91
	184,304 96	25,223 13

$184,304 96
25,223 13

$159,081 83

292 *Summary*, 1883.

To contract labor, stopping, drifting, &c.	70,133 95	
other labor, as per time book	58,748 00	
material and supplies used	14,601 90	
9,514¼ cords wood burnt	30,919 61	
teaming, &c.	1,475 00	
sundry items	2,095 95	
use of locomotive, p'd F. M'g Co.	240 00	
taxes	1,273 66	
insurance	921 50	
attorneys and sundry items	345 80	
agent's, clerk's, and watchmen's salaries	3,549 59	
By labor ch'g'd miners on contract		854 42
profits on supplies sold miners		11,863 79
house and ground rents		3,399 74
sundry labor and other items		4,466 15
manipulating 2,704 tons rock, F. M'g Co.		2,170 32
use of a man-engine, ch'g'd F. M'g Co.		675 00
sundry supplies sold		1,548 80
commission on collections		244 91
expense, 9 mos., 1883		159,081 83
	$184,304 96	$184,304 96

293 *Expense*, 1884.

Mining expense.

To stoping 775 fms. at 13.63	$10,535 56	
drifting and cross-cutting 1,376.2 feet, 12.10	16,836 27	
sinking 74 ft. winze, $16.16	1,196 19	

To sinking 16 feet shaft, 15.50	$248 00	
sundry labor on contracts	3,556 31	
sundry labor, time book	16,719 31	
materials and supplies used	4,640 54	
5,384¼ cords wood burnt	18,341 72	
teaming, coal, & sundry items	2,013 51	
By labor ch'g'd miners on contract		363 21
profits on supplies sold miners		5,033 57
use of man engine, ch'g'd F. M'g Co.		1,375 00
hoisting 1,754 tons rock, F. M'g Co.		1,560 40
labor ch'g'd sundry parties		84 22
old brass sold		105 00
ch'g'd F. M'g Co. use of compressor		63 00
mining expense		65,502 69
	$74,087 41	$74,087 41

226,214 ingot- produced.

294 *Surface Expense*, 1884.

To labor, as per time book	$3,266 39	
125½ cords wood burnt	410 37	
supplies used	1,160 43	
teaming and repairs	130 78	
By house and ground rents		4,404 32
teaming ch'g'd mining expense		580 00
teaming ch'g'd other parties		1,133 62
labor charged sundry parties		301 62
royalty from brick yard		540 92
receipts over expenditures	1,992 51	
	6,960 48	6,960 48

Stamp-Mill Expense.

To labor, as per time book	$2,364 62	
supplies used	631 38	
wood burnt, 693½ cords	2,341 87	
stamping 5,806 tons rock at F. M'g Co. mill	3,483 60	
By stamping 3,291 tons rock for F. M'g Co.		2,364 70
sundry items		25 81
stamp-mill expense, stamped 14,505 tons rock		6,430 96
	$8,821 47	$8,821 47

295 *Tram-Road Expense*, 1884.

To labor, as per time book	956 16
supplies and fuel	233 18
use of locomotive, pd. F. M'g Co.	176 40

To paid F. M'g Co. for delvg. 4,286 tons of rock to mine	$428 60	
By delvy. 3,291 tons F. M'g Co. rock to mill		401 02
tram-road expense, delvry. 11,214 tons rock to mill		1,393 32
	1,794 34	1,794 34

Rock-House Expense.

To labor, time book	1,933 14	
supplies	78 11	
By handling 1,040 tons rock for F. M'g Co.		176 98
rock-house ex., handling and selecting 11,214 tons rock		1,834 27
	$2,011 25	$2,011 25

General Expense.

To agent's and watchman's salary	2,529 47	
taxes	691 24	
insurance	800 00	
attorneys and other items	561 54	
By less charged back taxes to Concord M'g Co. on sec. 21, T. 55, R. 33, 1880, '81, '82, '83		179 09
general expense		4,403 16
	4,582 25	4,582 25

296 *Office Expense*, 1884.

To clerk's salary	759 00	
fuel and oil	20 40	
stationery, telegraphing, &c.	152 77	
By commossions on collections		78 09
office expense, 1884		854 08
	932 17	932 17

Summary, 1884.

Mining expense	$74,087 41	8,584 72
Surface "	4,967 97	6,960 48
Stamp-mill "	8,821 47	2,390 51
Tram-road "	1,794 34	401 02
Rock-house "	2,011 25	176 98
General "	4,582 25	179 09
Office "	932 17	78 09
	$97,196 86	$18,770 89

97,196 86
18,770 89

$78,425 97

297 *Summary*, 1884.

To contract labor, stoping, drifting, &c.	$32,372 33	
sundry labor, as per time book	25,239 62	
material and supplies used	6,916 81	
6,202½ cords wood burnt	21,093 96	
teaming, &c.	2,144 29	
use of locomotive p'd F. M'g Co.	176 40	
paid Franklin M'g Co. for manipulating rock	3,912 20	
taxes	691 24	
insurance	800 00	
attorneys and sundry items	561 54	
agent's, clerk's, & watchman's salary	3,288 47	
By labor ch'g'd miners on contract		363 21
profit on supplies sold miners		5,033 57
house and ground rent		4,404 32
sundry labor and other items		2,304 36
manipulating for F. M'g Co.		4,503 10
use of man-engine		1,375 00
use of compresser		63 00
supplies sold		105 32
commission on collections		78 09
royalty from brick yard		540 92
expense, 1884		78,425 97
	$97,196 86	$97,196 86

298 *Expenditure*, 1885.

Mining expense.

To labor, as per time book	$2,522 48	
supplies used	312 79	
2,218¼ cords — burnt, bo't from F. M'g Co.	8,787 06	
stumpage ch'g'd m'g expense to balance account	427 00	
By use of man-engine, F. M'g Co.		1,200 00
rebate from M. C. Bullock M'f'g Co., use of dia. drill		554 00
sundry items		48 68
	12,049 33	1,802 68

Surface Expense.

To labor, as per time book	581 69	
supplies	104 96	
sundry items	22 02	
By house rents		3,926 91
ground rents		132 00
royalty from brick yard		575 00
sundry items		73 75
	12,758 00	6,510 34

	Office Expense.		
	To clerk's salary	$140 00	
	stationery	5 90	
	Forward	12,903 90	6,510 34
299	Amount bro't forw'd	12,903 90	6,510 34
	General Expense.		
	To agent's and watchman's salary	995 04	
	insurance	439 68	
	taxes	1,106 64	
	int. on acc'ts, court costs, &c.	1,832 98	
	attorneys' fees	2,150 00	
	agent's expense attending suit, Boston, Detroit, &c.	240 50	
	sundry items	8 20	
		$19,676 94	$6,510 34
300	*Expenditure*, 1886.		
	Agent's & clerk's salaries	$1,020 00	
	Machinist, engineer, and other labor	1,555 25	
	Bought 1,583¼ cords wood	5,753 37	
	Supplies	532 25	
	Taxes, 1886	799 01	
	Sundry bills	391 58	
	Sundry items	84 46	
	Receipts.		
	Ground rents & pasture		$234 55
	House rents		3,891 61
	Royalty from brick yard		1,087 30
	Rebate on insurance		202 67
	Sundry items		34 15
	Rebate from Franklin M'g Co., 688¾ cord-wood		2,686 12
	Supplies sold		19 95
	Man-engine		1,200 00
		$10,135 92	$9,356 35
301	*Expenditure*, 1887.		
	Agent's & clerk's salary	$1,020 00	
	Machinist, engineer, & sundry labor	1,563 04	
	1,440 cords wood burnt	4,392 00	
	Supplies and teaming	418 92	
	Rents returned and rebate overcharged supplies	246 59	
	Paid at-orneys	36 05	
	Insurance	100 00	
	Taxes, 1887	881 23	
	Sundry items	105 01	

Receipts.

House rents		$3,377 94
Ground rents		385 70
Man-engine, 12 mos.		1,200 00
Compresser, 12 mos.		600 00
Compresser, from June 1, '85, to Jan. —, '87, 19 mos.		950 00
Supplies, tools, &c., sold		908 99
Royalty from brick yard		333 32
Sundry items		15 62
	$8,762 84	$7,771 57

302 *Expenditure*, 1888.

Agent's & clerk's salary	$1,020 00
Engineer and other labor	1,497 99
1,440 cords wood for pump	4,320 00
Supplies bought and used	513 51
Sundry items	157 49
Paid attorneys	1,444 63
Paid taxes	1,113 87

Receipts.

House rents		$3,369 52
Ground rents		202 00
Supplies sold		1,251 49
Man-engine, 12 mos.		1,200 00
Compresser, 12 mos.		600 00
Sundry items		26 75
Royalty from brick yard		300 00
Hay from Lake Annie, &c.		250 00
	$10,067 49	$7,199 76

303 *Expenditure*, 1889.

Agent's & clerk's salary	$1,020 00
Engineer's and other labor	1,170 68
1,404 cords wood bought & burnt	4,212 00
Supplies bought and used	388 44
Paid attorneys	477 60
Transfer to new machinery acc't	987 00
Sundry items	126 11

Receipts.

House rents		$3,323 95
Ground rents		72 15
Man-engine, 12 mos.		1,200 00
Compresser, 12 mos.		600 00
Rebate from attorneys		250 00
Material, &c., sold		1,961 49

Hay sold		$223 00
Sundry items		40 00
Right of way, Quincy M'g Co.		6,178 20
	$8,381 83	$13,848 79

304 *Expenditures from Jan. 1st to July 1, 1890.*

Agents and clerk's salary	$510 00
Engineer's and other labor	613 48
Supplies bought and used	477 86
720 cords wood for pump	2,160 00
Franklin M'g Co., draft sent treasurer	1,000 00

Receipts to July 1, 1890.

House rents		$1,763 35
Use of man-engine		600 00
Use of compresser		300 00
Supplies sold		73 90
	44,761 34	$2,737 25

305 *Construction and Repair Account from April 1, 1883, to December 31.*

Repairing houses.

To labor, as per time book	$436 42	
material used	639 79	
		$1,076 21

Building Boiler-House.

To labor, as per time book	1,807 84	
material used, S. L.	1,252 33	
	3,060 17	
repairing, wood, dock material, and labor		208 47
repairing man-engine, boiler, and sundry repairs		336 69
labor b'l'd'g snow-sheds	47 18	
material used	146 43	
		193 61

Water Works.

labor, as per time book	689 92	
material, gas pipe, &c.	1,744 67	
	2,434 59	
By shed sold		75 00
charged F. M'g Co. on water works—see statement, 1884		613 42
repairing houses	66 09	
building steam-pipe stand	105 65	

By trestle at mill		$84 08	
labor and material on water works		57 20	
transfer from new machinery acc't, pump for water works		650 00	
received from Franklin M'g Co. for Pewabic M'g Co. ½ int. in water works		------	2,149 02
		8,272 76	2,837 44

Man-Engine Acc't, 1883.

Extending man-engine:

To labor May, June, July, and August	1,766 47	
material used	1,372 47	
		$3,138 94

306 *New Machinery Account*, 1883.

April —.	To sundry labor	$265 47	
	supplies, as per ledger	1,239 74	
	2 7 x 8 winding engines, with pumps, transfer from supply acc't	650 00	
	1 boiler, bot. from D. & H.	1,314 00	
	1 Worthington pressure pump from W., B. & Co.	650 00	
	1 Worthington pump from Worth'ton	345 00	
1884.			
Jan. 31.	supplies, as per ledger	312 32	
	pony engine & drum	245 00	
	1 steam pump and freight	331 66	
1887.			
	By 1 pump, transferred to construction acc't	------	325 00
	4 Rand drills sold	------	1,500 00
	2 pony engines sold	------	500 00
	1 W-rthington pressure pump, transferred to construction acc't	------	650 00
	1 Worthington pump sold	------	345 00
	1 boiler sold	------	400 00
	1 planer sold	------	975 00
	1 planer chuck 10 00		
	1 angle plate 5 00		
	1 lathe chuck 45 00		
	1 lathe, 23″ swing, 10″ bed 450 00		
	1 boring machine 200 00		
	1 upright engine 175 00		
			885 00
	1 portable forge	------	12 00

Transfer from expense acc't, sold and credited wrong acc't:			
1 bolt-cutter	400 00		
1 lightening screw-plate	35 00		
1 small lathe	225 00		
1 Worthington pump	327 00		
			987 00
1 pony engine sold		------	270 00
		$5,353 19	$6,849 00

307 *Summary of Disbursements and Receipts from April* 1, 1883, *to June* 30*th*, 1890.

Disbursements.

To contract labor, stoping, drifting, &c.	$102,506 28	
sund. labor, as per time book	98,753 35	
material and supplies used	30,005 00	
24,422 cords wood burnt	81,638 00	
teaming	4,038 00	
sundry items	10,996 40	
use of locomotive, p'd F. M'g Co.	416 00	
taxes	5,865 65	
insurance	2,261 18	
att'ys, int., ans other charges	7,097 30	
ag't's, cl'k's, and watchman's sal-ry	12,563 10	
rock manipulating by F. M'g Co.	3,912 20	

Receipts.

Labor charged miners on contract	----------	$1,217 63
Profits on supplies sold miners	----------	16,897 36
House and ground rents	----------	22,483 74
Sundry labor and items	----------	6,770 51
Manipulating rock for F. M'g Co.	----------	6,673 42
For use od compresser	----------	3,113 00
For use of man-engine	----------	8,650 00
Supplies and material sold	----------	13,266 94
Commission on collections	----------	323 00
Royalty from brick yard	----------	2,836 54
Sundry items	----------	792 95
Rebate on wood from Franklin M'g Co.	----------	2,686 12
Rebate on insurance	----------	202 67
Rebate from att'ys	----------	250 00
Right of wat from Quincy M'g Co.	----------	6,178 20
From Franklin M'g Co., ac't water works	----------	2,762 44
	$360,053 07	$101,104 52

308 *Trial Balance, June 30, 1890.*

	Dr.	Cr.
Expense from 1874 to 1886	$1,430,217 85	
Expense from Jan., 1887, to June 30, 1890	1,195 70	
New machinery acc't	33,293 49	
Man-engine acc't	17,304 57	
Construction and repair acc't	13,745 95	
Balance due for rent	288 23	
Cash acc't	9 42	
D. L. Dem-on, treasurer		$1,493,989 04
The Nat'l Bank of Houghton		208 78
Franklin M'g Co.		1,745 71
Centenial M'g Co.		3 34
Jas. H. Seager		1 95
Quincy M'g Co.		3 50
Poll-tax acc't		1 00
Jas. Howard and Son		90 69
Wm. Harry		90
J. Hodges		10 30
	$1,496,055 20	$1,496,055 21

(Endorsed:) The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *vs.* Pewabic Mining Co. Statement of mining expenses. Filed Aug. 26, 1890. C. L. Fitch, clerk.

309 *Synopsis of Contents of Mine Books of the Pewabic Mining Co.*

Supply account, 1883.

To balance April 1st	17,728 62	
bo't as per bills on file & journal	45,675 33	
profits on supplies sold miners, credited m'g expense	11,863 79	
fr't on coal and other supplies	2,279 03	
		$77,546 77
By supplies charged on contracts	30,941 02	
supplies ch'g'd expenses and acc'ts	20,440 50	
supplies sold employés and others	3,723 63	
supplies tr'nsf'd new mach'n'ry acc't	298 87	
500 tons coal sold F. M'g Co.	1,850 00	
$73\frac{365}{2000}$ tons hay sold F. M'g Co.	615 33	
		57,869 35
To balance on hand Jan. 1st, 1884		$19,677 42
bought as per bills on file	13,247 31	
profits on supplies sold miners	5,033 57	
freight paid	11 89	

To transfer to new machinery acc't, drills sold, cr't'd supply acc't instead of N. M.	$700 00	
		$18,992 77
		38,670 19
By supplies ch'g'd on contracts	12,780 60	
supplies ch'g'd expenses and acc'ts	8,724 17	
supplies sold Franklin, Huron, and other parties	10,194 09	
		31,698 86
To balance Jan. 1st, 1885		6,971 33
bought as per bills	783 57	
transfer to new machinery acc't, sold and credited supply acc't instead of N. M.	800 00	
		1,583 57
		8,554 90
By supplies ch'g'd expenses	416 95	
supplies sold Franklin, Huron, and others	4,218 04	
		4,634 99
To balance Jan. 1st, 1886		3,919 91
bought		334 02
		4,253 93
By charged expense	342 28	
sold Franklin mine and others	3,911 65	
	$4,253 93	$4,253 93

310 *Mine Wood Account.*

1883.				
April 1. To bal.	4,583	cords		$15,104 95
bought to Dec. 31st	5,427½	c'rds		17,860 62
	10,010½	"		32,965 57
By ch'g'd m'g expense	5,905	cords	$19,189 61	
By ch'g'd drills	950¼	"	3,156 40	
By ch'g'd surface expense	143¼	"	465 56	
By sold	17	"	55 25	
				22,866 82
	7,015½			

1884. To bal. on hand Jan. 1st, 1884	2,995	c'ds			$10,098 75
To bought to July 31, 1884	5,763	cords			20,372 83
	8,757	cords			$30,471 58
By ch'g'd m'g expense	5,384½	c'ds		18,342 71	
By ch'g'd air-drills,	442	cords		1,470 00	
ch'g'd sur. ex.	125½	c'ds		410 37	
ch'g'd sold employés	5	cords		18 50	
By ch'g'd sold Franklin M'g Co.	2,800	cords		10,230 00	
	8,757				$30,471 58

Balanced Nov., 1884.

311 *Mill Wood Account.*

1883.					
April 1. To balance on hand,	2,245¼	c'ds			$7,118 31
Bought during year,	3,950¾	"			13,254 12
	6,196	"			20,372 43
By burnt at mill	3,466	c'ds		11,264 49	
sold employés	72	"		367 75	
					11,632 24
To balance Jan. 1, 1884	2,658	c'ds			8,740 19
Bought in March	212	"			918 49
	2,870¾	c'ds			9,658 68
By burnt at mill	1,131½				
Ch'g'd stamp-mill	693½			2,341 87	
" m'g expense	234			792 75	
" F. M'g Co.	204			714 00	
Sold F. M'g Co.	1,713¾			5,693 06	
" employés	25½			117 00	
	2,870¾				9,658 68

312 *Stumpage Account.*

1883.		
April 1. To balance	$3,035 33	
Paid for wood and timber lands to Dec. 31st	2,557 50	

	By amounts credited on wood and timber to Dec. 31		$648 57
	To balance Jan. 1, 1884		4,944 26
		$5,592 83	5,592 83
1884.			
	To balance	4,944 26	
Sold F. M'g Co.	By credits on wood and timber		2,087 26
	½ wood and timber on S. E. ¼ of sec. 36, T. 56 N., R. 34, 80 acres, at 18.00		1,440 00
	wood and timber on E. ½ of N. E. ¼, sec. 20, T. 55, R. 33, 40 acres		900 00
	wood and timber on 4 acres, sec. 20		90 00
	Bal. Jan. 1st, 1885		427 00
		$4,944 26	$4,944 26
1885.			
Jan. 1.	To balance	427 00	
	By ch'g'd to m'g expense, as wood, March, 50.00; April, 50.00; May, 50.00; June, 50.00; July, 227.00		427 00
		427 00	427 00

(Endorsed:) The circuit court of the United States for the western district of Michigan, northern division. Statement of expenses. Filed Aug. 26, 1890. C. L. Fitch, clerk.

313 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

HOUGHTON, MICHIGAN, *July 22nd*, 1890.

Special hearing before Peter White, special master.

Appearances: Thomas B. Dunstan, for complainants; J. W. Stone and Russel C. Ostrander, for defendants.

Hearing adjourned until Saturday, July 26th, 1890, at Houghton.

SATURDAY, *July 26th*, 1890.

Met, pursuant to adjournment, at the office of Stone and Gray.

Mr. DUNSTAN: I offer in evidence the report of the Pewabic Mining Company, of January 1st, 1884, signed by D. L. Demmon, treasurer, and found on pages 14, 15, 16, 17, 18, & 19 of the transcript of record in this case, in which is reported and shown the balance of assets over liabilities to be $39,681.61.

314 Judge STONE: This is the United States Supreme Court record, is it?

Mr. DUNSTAN: Yes; it is the record in the case.

ARNO JAEHNIG, a witness produced, sworn, and examined on behalf of the complainants, testified as follows:

Direct examination by Mr. DUNSTAN:

Q. Where do you live?
A. I live at Franklin.
Q. In Houghton county, Michigan?
A. Yes.
Q. And you have resided there for what length of time?
A. About 14 years; since 1875—15 years.
Q. You testified in this case six years ago, or thereabouts, did you not?
A. I testified on the tax business; that is all.
Q. I mean you gave testimony?
A. Yes, sir.
Q. What is your business?
A. Book-keeper.
Q. For what or whom?
A. The Franklin Mining Company and the Pewabic Mining Company, at present.
Q. How long have you been book-keeper for the Pewabic Mining Company?
A. Since 1887; July, 1887.
Q. Are you familiar with the accounts of the Pewabic Mining Company since that time?
A. I am; from that time.
Q. Have you had the exclusive charge of the books of the Pewabic Mining Company since that time?
A. Yes, sir.

Judge STONE: That is, of the books that are here, you mean, of course. He does not mean to testify as to the Boston books.

The WITNESS: Of the mine books; yes.

Mr. DUNSTAN:

Q. Those books are now in the room, are they not?
A. Yes, sir.

315 Q. Will you take them, please, and identify them?

Judge STONE: Just take them and name them as you hand*le* them over.

Mr. DUNSTAN: Yes.

A. They consist of a journal, cash book, index, and ledger, trial-balance book, time book, and contract book and cost sheet for 1884, bound, and cost sheet for 1885—the year included in three books. I have a draft advice book and letter book copy.

Q. Those are the Pewabic books kept at the mine office in this county?

A. Yes, sir.

Mr. DUNSTAN: We offer those books in evidence.

Books received in evidence.

Mr. OSTRANDER: Do you care to state now the purpose of offering them?

Mr. DUNSTAN: We wish to show the receipts, disbursements, and debts, if any, that can be shown here; show the exact condition of the debts and liabilities, and for such other purposes as will aid in this investigation.

Mr. OSTRANDER: The objection to that is, until by some sort of testimony it appears that these books will show some of the things which are before the master, they ought not at least to be received in evidence. They may and may not, so far as the proof now discloses, show anything that the court is interested in. If disclosed by testimony that they do show some of these things, the objection would be without force.

Mr. DUNSTAN: I take it that the only thing that can be done here is to object and place the objection on the record, and the evidence goes in.

316 Mr. OSTRANDER: I suppose the master has the right to specify the order of proof we shall pursue, and the objection in this case goes to the order of proof first, and I think he has full control of this hearing in that respect; surely, there isn't any question about that. Will the court receive the books now?

The MASTER: Yes, subject to your objection.

Mr. DUNSTAN:

Q. Will those books show the expenses and disbursements of the Pewabic Mining Company?

A. The expenses and disbursements here, or the receipts and disbursements here?

Q. For what period—how far back do those books go?

A. I think that ledger goes back to 1881; I wouldn't be certain.

Q. Will you examine and see how far back those books go, so we will know definitely, if we have the books.

A. The ledger goes back to July, 1881?

Q. How far back does the journal go?

A. November, 1882.

Q. How far back do the other books go that you have?

A. The cash book to February, 1883; trial-balance book, November, 1879; the time books, February, 1883; and the contract book, February, 1883.

Q. Are there any other books at the mine office in this county or memorandum or vouchers that have a tendency to show the receipts and disbursements of the Pewabic Mining Company since April 4th, 1883?

A. No, sir; there are other books at the mine.

Q. You state there are other books at the mine?

A. Yes, sir; there are other books.

Q. What are they?

A. That I couldn't tell you; there are books there from the time the mine started.

317 Q. Are there any other books covering the period from April 4th to the present time, excepting what you have introduced?

A. Yes; there is another time book and contract book and a cash book, but it is all posted into the ledger.

Judge STONE: But he asks you if there is any cash book showing transactions since April 4th, 1883?

A. They are all in there.

Mr. DUNSTAN:

Q. I understand, the entire accounts of the Pewabic Mining Company, at this end of the concern, are contained in the books that are now in the office?

A. Yes, sir.

Q. Isn't there a supply book up there?

A. A supply ledger.

Q. Are the items in that copied into these books?

A. They are condensed in there—the amounts.

Q. Can you produce that supply book by the next examination?

A. Yes, sir.

Q. Can you ascertain and testify from these books as to the total receipts of the Pewabic since the termination of its existence as a corporation, April 4th, 1883?

A. Not without going through the books and making a statement.

Q. Can you testify with reference to the expenses and disbursements since April 4th, 1883, through the books that you now have here—the total disbursements and expenditures since April 4th, 1883?

A. Yes, sir.

Q. Will you please turn to the books and give us the items and dates of all credits—all monies received during this period from April 4th, 1883, down to the present time?

A. I said I couldn't do it without a statement.

318 Q. Can you not now take the books and testify from them here in the presence of the master?

A. No, sir.

Q. Why not?

A. Well, I can start at April 4th, 1883, and read off all the receipts and credits.

Q. That is what we want—we want you to do that now, and testify as to every receipt.

Judge STONE: I simply, in the interest of decency and the good order of this proceeding, wish to object to any such thing, and to renew the request, respectfully but earnestly, in the light of disclosure of counsel the other day, that they did not propose to go into this question now, but that they were here for was to ascertain the debts against the Pewabic Mining Company; to renew the objection that this branch of the case should not be gone into until statements are filed, and to offer on our part to file a statement under rule 79, just as soon as it can be made up, showing debts and credits. You won't get through with this witness in a week, in the direct and and cross examination, if you start into it, and then what have we got? Nothing tabulated at all, but spread out through a great number of pages of testimony. What should be done should be to bring in a statement of debits and credits; then we have something before the master that can be checked up and followed. It does seem to me that we are going on a wild-goose chase that we ought not to put anybody to the expense of—clients or anybody else.

Mr. DUNSTAN: They evidently knew the object of this examination weeks ago. Notice was served upon them upon the first of July as to what would be required in this court in this hearing.

319 The solicitors should know the nature of the decree to know what it means, and it means before we get through with this hearing that we will have to go into the matter of credits and disbursements, as well as the matter of debts, and Mr. Baker stated the other day here that we would have to go into not only the matter of the debts of this mine, but the credits and disbursements as well. Now, they have had ample time to prepare this statement and get it into this court to-day. They have had weeks in which to do it, and they have not done it, and it will take us days to get this data. The cause of this delay will certainly rest upon the other side and not upon this, and I suppose they would come here prepared with some statement or would be in shape to introduce this proof without much trouble. There were any number of supplies at that mine in 1884. I presume they have been disposed of—that is, a large amount of them I presume has been. We want to know how much has been realized.

Judge STONE: We can show here in five minutes all those things, so far as that is concerned; but to go into the question of receipts and disbursements, it is simply a question of a good deal of time. I wish to call your honor's attention once more in protesting against this. Counsel says that notice was served upon us. The notice served upon us was that we should produce the books at the hearing, and, so far as the books are concerned, they were produced at the hearing. No subpœna to testify, showing that defendant Vivian or this clerk were to be called upon to testify to anything, was served until dark of the night before the hearing on Tuesday—last Monday evening about seven o'clock, we will say, a little before dark. On

the next morning they produced these books here and turned
320 them over to the master and distinctly said that we must not be expected to make up any statement if we left the books with the master, and it was said it was not expected, and we have only had the books in our hands about 12 or 15 hours since Monday, not since any notice was served upon us to testify. The books have been produced. We were at a loss to know what you were going into now. Now, I say, if we are going into a statement or accounting, I think we should file a statement. We can in five minutes tell the results here, but if we are going into details, it seems to me the statement should be filed.

Mr. DUNSTAN: We will go into results at the present time, with the understanding that Mr. Jaehnig will make out such a statement and file it.

Judge STONE: We must make such a statement, of course. There must be full statements filed, when it comes to an accounting with these directors.

Mr. DUNSTAN: When will you be ready to do that?

Judge STONE: This statement must be prepared and filed from both ends of the mine, here and in Boston. We must get before the master and court a full statement.

The MASTER: It seems to me it will be interminable if you go into it by items.

Mr. DUNSTAN: I am glad this discussion arose. We will proceed, then, with this modification. I understand you will file that statement as soon as you possibly can.

Judge STONE: Certainly; there is no objection to that. We want to do it. We should be at work at it this week. We will do it just as soon as it can be done.

321 The MASTER: You will do it in a week from to-day?

The WITNESS: I think I can do it in a week.

Q. What have been the total receipts of the Pewabic since the expiration of this charter, April 4th, 1883?

A. I don't know.

Q. Can you give the total receipts since January 1st, 1884?

A. No, sir; not without a statement.

Q. Have you no tabulated statement in your books from which you can testify to the total receipts from either of those dates?

A. There is 1884 and 1885 there in the cost sheets.

Q. Then that will have to be contained in the statement that you propose to make?

A. Yes.

Q. How is it, with reference to the expenses and disbursements; have you any statement as to the amount disbursed and spent since April 4th, 1883? Can you tell from your books, in round numbers, the exact amount?

A. I have a statement there for 1887 and 1888, but it does not include all.

Mr. DUNSTAN: Well, we shall want those items in both cases and the dates, and the dates of disbursements and receipts.

Q. Have you an itemized statement in your books showing the personal property sold by the Pewabic since the dissolution of the corporation, April 4th, 1883?

A. Yes, sir.

Q. Can you state now from those books the items sold and the amounts and dates?

A. Not very well.

Q. You will have to include that in your statement?

A. Yes, sir.

Mr. OSTRANDER: You mean that statement to cover all that, don't you?

322 Mr. DUNSTAN: The total receipts and disbursements of every kind—years, items, and dates of sales, disbursements, and receipts.

Judge STONE: Whether supplies sold or mineral sold or anything else.

Mr. DUNSTAN: Yes.

Mr. DUNSTAN:

Q. Do you know whether the taxes have been paid in full on the Pewabic property up to date?

A. They were paid up to last year—last year was not paid.

Q. The taxes of 1889 have not been paid?

A. No, sir.

Q. From your books can you state the amount of those taxes?

A. For 1889?

Q. Yes.

A. No, sir.

Q. That you will include in your statements?

A. That doesn't appear on our books.

Q. You can produce the tax bills, can you?

A. Yes, sir.

Judge STONE: Remember to do that.

Q. Now, do you know of the Pewabic pump, man-engine, and compressor?

A. Yes, sir.

Q. Those have been in operation since the dissolution of the corporation, have they not?

A. Yes, sir.

Q. They are situated on the Pewabic property?

A. Yes.

Q. Do you know the contract or agreement between the Pewabic and the Franklin, with reference to the use of those three properties?

A. No, sir.

Q. Do you know whether there is any such agreement in
323 writing on file in your office?

A. I don't.

Q. Do you say there is none?

A. I don't know of any.

Q. What inventories do you have here now with you?
A. The last one was for March 1st, 1888.
Q. Have you the inventory of 1883?
A. No, sir.
Q. Or 1884?
A. 1884 is there in the cost-sheet.
Q. 1885?
A. None for 1885.
Q. Any for 1886?
A. No, sir.
Q. Or 1887?
A. No.
Q. But there is one of 1888?
A. Yes.
Q. Any of 1889?
A. No, sir.
Q. Or 1890?
A. No.
Q. None ever made?
A. No, sir.
Q. Do you know what personal property there is now at the mine?
A. I don't.
Q. You made no examination of the matter?
A. No, sir.
Q. What debts, if any, have been presented to the company at this end of the line for payment since 1883?
A. I don't know of any.
Q. Some suits were brought against the company, I believe, were they not, in 1884 and 1885?
A. I don't know, sir; I wasn't the book-keeper at that time.
Mr. OSTRANDER: Who was book-keeper immediately preceding you?
A. Joseph H. Vivian.

Mr. DUNSTAN:

Q. These books will show what judgments have been paid by the company at this end of the concern?
A. Yes, sir.

324 Captain JOHNSON VIVIAN, a witness produced, sworn, and examined on behalf of the complainants, testified as follows:

Direct examination by Mr. DUNSTAN:

Q. You were a witness in this case six years ago, were you not?
A. Yes, sir.
Q. At that time you were a director of the Pewabic?
A. Yes.
Q. And sole Michigan director?
A. Yes.
Q. And you were sole Michigan director for how long previous to the summer of 1884?

A. Since 1874, I think.

Q. Do you know of any claims having been paid in this county by the Pewabic?

A. I couldn't call any to mind in particular now, but there have been some. The books will show all.

Q. Some judgments paid, I think?

A. One or two, I think.

Q. To the Shelden executors?

A. I think so; there was a sheriff's sale. I remember buying back for the company and reselling of it afterwards for five times the amount I gave.

Q. Have any other claims been pressed for payment at this office, excepting those?

A. Yes; you pressed one very hard once for $1,000.

Q. What claim was that, do you remember?

A. I believe it was Dessau.

Q. Dessau, of New York?

A. Yes.

Q. And that was paid?

A. That was paid, I believe.

Q. All claims, then, that have been pressed for payment at this end of the line have been paid, I believe?

A. Yes; that is the only one.

Q. Didn't the Quincy have one against the Pewabic?

A. I guess they had. I don't think they sued for it.

325 Q. That was paid?

A. Yes.

Q. The claim of Andrew Johnson against the company was also paid, I believe?

A. By sheriff's sale, I think.

Q. And the claim of Shelden—the two Sheldens, as executors of the estate of Ransom Shelden?

A. I suppose so; I am not very conversant with that. It is so long ago my memory fails me.

Q. Do you know of any other claims that have been pressed for payment?

A. I don't know of any pressed in that way.

Q. In any other way?

A. I know some were asked for and paid.

Q. Do you know of any debts in this section of the country now outstanding against the Pewabic?

A. Yes; the Franklin.

Q. How much?

A. $1,727.21 up to July 1st.

Q. What was that for?

A. Oh, a thousand and one things; the books will show; I couldn't tell.

Q. The books will show everything?

A. Yes.

Q. Do you know of any other claims?

A. I don't know of any other.

Q. In this section?

A. No.

Judge STONE: That is, when you say you don't know of any other, you mean to speak from the books here?

A. Of course, I don't know precisely; if the books show any, there is, but I don't know of it.

Q. But whether there is any larger indebtedness to the Franklin within your knowledge?

A. Not up to July 1st.

Q. Not at this end?

A. No; at the other end, I couldn't testify anything in regard to that.

Mr. DUNSTAN: My questions apply to this end.

Mr. DUNSTAN:

Q. If there were any other debts at this end, should you
326 know it?

A. I should know it; I should think so; they generally hunt up the individuals of my kind to pay them.

Q. Now, I understand that the Franklin has been using the compressor, man-engine, and pump of the Pewabic Mining Company?

A. Yes.

Q. Was there any contract between the Franklin and the Pewabic Mining Company with reference to the use of those machines?

A. The books show all the contract there is.

Q. Any written contract?

A. No; they never made any written contract with myself; didn't think it worth while.

Q. Can you testify to any contract, aside from the books, from your own knowledge?

A. No; the books show the contract exactly.

Q. I understand the compressor and man-engine are operated from the same boiler?

A. Yes.

Q. What was the object in running the pump, to keep the water out of the Pewabic?

A. Yes; they generally do that; the pumps are for that purpose.

Q. Has that been the sole object?

A. Yes.

Q. Wasn't it also for the purpose of keeping the water out of the Franklin?

A. No; it would have run into the Franklin long before now if it wasn't kept out; but that wasn't kept out for the Franklin, but for the Pewabic.

Q. How much water have you kept out?

A. I don't know how much; I never measured it.

Q. At what level is the opening between the Pewabic and Franklin?

A. The 25th; there is two or three openings, in fact, from the surface.

Q. But the first opening from the bottom of the mine is at the 25th level?

A. Yes.

327 Q. How far is the top of the water from that level?

A. I don't know; not very far. I presume from, in fact, the 26th level in the Pewabic, but the levels differ a little. There is a section there will show it; that shows the thing exactly. I refer to that (referring to map of section of the mine).

Q. Now, if the object was to keep the water out of the Pewabic, why is it it wasn't kept out?

A. Because there were no pumps down to the bottem. We kept out the top water. That is $\frac{2}{10}$ of all the water there is in the mine.

Q. When were the pumps taken out of the bottom of the mine?

A. They were never taken out; they were never put in.

Q. Wasn't there any pumps in the bottom of the Pewabic?

A. Never.

Q. How did you get the water out of the bottom?

A. Hoisted it with a skip and a little pony arrangement, from place to place.

Q. Sort of a pony pump?

A. Yes.

Q. It was taken out when?

A. Soon after we stopped operations. We couldn't keep the water out without the skip, and as the skip stopped and the shaft got into bad condition and no money to repair it, the water was left there; and there was no money to pump water with, either.

Q. So the water has been permitted to fill up within a few feet of the 25th level?

A. Somewheres, yes; it is above the 26th level.

Q. And as soon as the water can get up to the opening between the 25th and 26th levels, I understand you, it will flow into the Franklin?

A. Yes.

328 Q. Then one of the objects was to keep it from flowing into the Franklin, wasn't it?

A. No, sir.

Q. But simply to keep it out of the Pewabic?

A. As agent of that mine, I kept out all the water I possibly could, and I done everything else for the good of the Pewabic.

Q. Now, in regard to the operation of the compressor. The compressor was operated to run the Franklin drill?

A. Yes, they are; for which we got a revenue.

Q. The Pewabic got a revenue?

A. Yes; and the Franklin kept them in repair.

Q. What was that revenue?

A. The books will show.

Q. You cannot testify from your own knowledge?

A. I can guess at the thing, but I don't propose to. There is the books. The books will show every item of it. That is what we want to make out the statement for.

Q. With regard to the man-engine—that was operated?

A. Yes, sir.
Q. That was for the benefit of the Franklin?
A. Yes.
Q. And also the compressor?
A. Yes.
Q. Do you know how much the Franklin is now paying for the use of those machines?
A. Our books show.
Q. You don't know from your own personal knowledge?
A. I have an idea, but I don't propose to testify to one thing and the books show something else.
Q. State according to your best judgment.
A. I would rather not answer that question, because the books will show.
Q. Do you know of your own personal knowledge, aside from those books, what the terms or agreement was between the Pewabic and the Franklin?
329 A. Yes; I made it several years ago, and it has slipped my memory. You can ask the clerk; he knows that.
Q. I would like to get it from you if you know?
A. They have slipped my memory partially and they are in the books. I didn't come here loaded up with anything like that.
Q. Can you testify as to the amount of money received from the right of way of the Quincy and Torch Lake railroad across the Pewabic?
A. I don't know the exact amount. Six thousand dollars, I think it was. We can give you the amount from the books.
Q. Have you examined the books to know whether the amount stated is correct?
A. No, sir; I have not examined the books. I have a clerk competent of doing all that and honest enough to keep them.
Mr. OSTRANDER: You can agree to that and let it go in there.
Judge STONE: Yes; we might agree to that, but it is all on our books. (Judge Stone examines book.)
Judge STONE: The amount is $6,178.20.

Mr. DUNSTAN:

Q. What has been done with the mining supplies on hand at the time the company stopped?
A. We have sold most of them.
Q. And the books will show to whom they are sold, will they?
A. Yes.
Q. And the price realized?
A. Yes, sir; and the price.

Judge STONE: We reserve the right of cross-examination.
Mr. DUNSTAN: I understand there will be given in the statement an itemized account of this indebtedness to the Franklin?
Judge STONE: Yes; this end of it, you understand.
Mr. DUNSTAN: Yes.

330 JAMES MOORE, a witness produced, sworn, and examined on behalf of the complainants, testified as follows:

Direct examination by Mr. DUNSTAN:

Q. Where do you live?
A. At the Quincy.
Q. In this county?
A. Yes, sir.
Q. What is your business?
A. Engineer.
Q. How long have you been an engineer?
A. Oh, ever since I remember.
Q. You testified in this case six years ago, did you not?
A. Yes, sir.
Q. Where are you now employed?
A. With the Quincy Mining Company.
Q. Did you examine the property of the Pewabic last Tuesday?
A. I merely went through the place—through the machine shop.
Q. Have you a list as to what you have seen there?
A. Yes; this is it.
Q. Is that it that you hold in your hand?
A. Yes.
Q. Now, what buildings did you examine and what property did you examine?
A. I went into the machine shop.
Q. Where else?
A. And blacksmith shop, pump-house, hoisting-engine house, and new boiler-house, compressor-house, No. 6 shaft-house.
Q. Those are the only places you went?
A. That is all.
Q. What property did you see there?
A. In the machine shop was one small steam-engine, one lathe, one planer, one drill-press, one grind-stone, one chain-falls, about 30 feet of 2-inch shafting, some tools, and some old castings.
Q. Take the next place.
331 A. Blacksmith shop: Two anvils, one bolt-heading machine, one forcing machine, one table mandrel drill, one Sturtevant blower, nine Rand drills.
Q. Go on with the rest.
A. Pump-house: One pumping engine and boiler, one pump, one hose-reel, and outside there is two pair of gears, one for the man-engine and one for the hoisting engine. In the hoisting engine-house is one double hoisting engine and 12-foot drum, one man-engine, one Cameron pump, one hose-reel, four boilers, two injectors, one heater. New boiler-house is two boilers and one Worthington pump; compressor-house, one double-air compressor, one circulating pump; shaft-house, two rock-breakers, one steam-engine, one 10-foot sheeve, 60 feet of three-inch shafting, about 60 feet, three skips. The skips were outside the shaft-house though; and that is all the property at the mine.
Q. Did you see any ore-cars at the Pewabic?

A. I did.
Q. How many, do you remember?
A. I counted, but I forget the number now.
Q. About how many were there, do you remember?
A. No; I wouldn't be certain about the number. I think it was 16 or 17; somewhere along there.
Q. Did you see a locomotive there?
A. No, sir.
Q. Did that belong to the Franklin or Pewabic?
A. I suppose it belonged to the Franklin.
Q. You haven't made an examination of any property in the mill, have you?
A. I came through there this morning.
Q. Have you the items of the property of the Pewabic at the mill?
A. Yes; at the Pewabic mill.
332 Q. Please testify as to them.
A. One supply Worthington pump, three slime tables, two skaking tables, 30 jigs, one 36 by 48 engine, three seven-inch stamps, 4 mortars, three steam-boilers, one feed-pump, one receiver, one lathe, one shot-bolt cutter, one scales; shafting and pulleys seem to be all in place, but I didn't take any measurement of the number of feet of shafting or pipe.
Q. Is this all the personal property at the mill or other property that you found there?
A. That is all; this pipe and some old belt.
Q. What kind of pipe?
A. Well, there was a large wrought-iron pipe to go from the pump up into a tank upon the upper floor and all this small pipe used in running the washers.
Q. Do you know anything of the pipe from the Pewabic mill up to the mine that was there six years ago?
A. I knew it was there at that time.
Q. What was it used for?
A. Pumping water from the lake.
Q. Up to the Pewabic?
A. To Pewabic.
Q. Any of that go to Franklin?
A. I think we did shove a little of it over at one time to the Franklin, but I don't think it was a usual thing.
Q. Now, what has become of that pipe, do you know?
A. It was taken from there and put over in the Franklin.
Q. Put over to the Franklin property, connecting the lake with the Franklin mine?
A. Yes.
Q. Do you know when it was put over there?
A. No; I don't remember the date.
333 Q. Do you know the number of feet of it that was taken and put over there? Do you know the length of this piping?
A. I think the Franklin pipe is somewhere about 7,200 feet.

Q. Do you know whether that was the extent of the pipe that was taken from the Pewabic and put over on the Franklin?

A. I think the Pewabic pipe was shorter; the distance was shorter.

Q. About how much shorter?

A. It is running in my head that the Pewabic pipe was about 5,000 feet; pretty near a mile.

Q. What was the size of it?

A. Four-inch pipe.

Q. Where was the pump that forced the water up?

A. It was in the Pewabic mill.

Q. Is it there yet?

A. No, sir.

Q. Do you know what has been done with it?

A. Put over into the Franklin mill.

Q. When was it transferred?

A. I don't remember the date.

Q. Were you employed by the Franklin at the time it was moved over there?

A. Yes.

Q. And the time the piping was shifted from the Pewabic to the Franklin?

A. Yes, sir.

Q. You were then engineer in charge, were you not, of the Franklin and Pewabic both?

A. Yes, sir.

Q. Do you know the compressor, man-engine, and pump of the Pewabic?

A. Yes.

Q. They are operated by what system of boilers?

A. Operated by those boilers in the hoisting-engine house—those four boilers.

Q. Have those boilers been used in generating steam for the man-engine, compressor, and pump since the summer of 1884?

A. I think so; yes.

334 Q. The man-engine and compressor were used for the benefit of the Franklin, were they not?

A. Yes.

Q. And the pump is used for the purpose of keeping the water out of the Pewabic?

A. Yes.

Q. And thereby keeping the water out of the Franklin?

A. Keeping the water out of the Pewabic; I suppose it would ultimately keep it out of the Franklin.

Q. Do you know how many cords of wood it would take to run the pump at the Pewabic and keep out all the water in it, per day?

A. I should say about four cords.

Q. About four cords a day?

A. Yes.

Q. To keep out the water the same as they have been keeping it out, how many hours a day would it be required to operate the

pump—alone, I mean—provided it was run independently of any other piece of machinery?

A. It would depend how long every day it would be run.

Q. To keep out the water the same as they have been keeping it out, how many hours a day would it be required to operate the pump—alone, I mean—provided it was run independently of any other piece of machinery?

A. From six to seven hours.

Q. And you have testified it would take how many cords of wood?

A. About four.

Q. Now, when you speak of four cords of wood per day do you mean with reference to running the full 24 hours a day?

A. Well, not quite 24 hours; by steady running I would mean probably 20 hours a day.

Q. That would be allowing four hours for men, meals, and such things?

A. Yes, sir.

Q. So, then, four cords of wood per day would be sufficient
335 to run the pump and keep out the water on the Pewabic when it was running 20 hours a day. Now, does it require as much pumping to keep the water out when it has obtained the level such as it now is—for instance, near the 25th level—as when the mine is entirely empty?

A. Yes; it will take as much, because the pump does not take hold of this bottom water at all.

Q. How many engineers would be required to keep out the water from the Pewabic, running about 6 or 7 hours a day?

A. I think one would be sufficient.

Q. Do you know whether or not any water in the Pewabic has been used for boiler water?

A. Yes; we used to pump that water for the feed.

Q. With this same boiler—same pump—I mean.

A. Yes; the same pump.

Q. Where was the water kept that was used for feed water?

A. It was kept at the 40th and 80th and 130th.

Q. Was it necessary to get this water in order to operate the man-engine and compressor?

A. Yes; we would have to get the water from there or somewhere else.

Q. Was it less expensive to get it from this place than anywhere else to feed the boilers that generated the steam for the man-engine and the compressor?

A. I think so, because we had our pump there already.

Q. Now, if you say it took four cords of wood to run the pump 20 hours, how many cords of wood per day would it take to run it 6 or 7 hours?

A. Well, I should say it would be as much less than four cords as the 6 or 7 is less than 20.

Q. Well, nearly one-third as much?

336 Judge STONE: A cord in five hours is his basis.

The WITNESS: That is in order of running. In spring and fall the water would be a little heavy and probably would have to run longer.

Mr. DUNSTAN:

Q. But you were speaking of the average during the year, were you not?
A. Yes, sir.

Cross-examination by Judge STONE:

Q. What do you say as to one engineer being sufficient to run that property—certainly not 20 hours a day?
A. One engineer would do the necessary pumping.
Q. That is, if you were pumping 5 or 6 or 7 hours a day?
A. Yes.
Q. Do you think one engineer could take care of the property during all the time?
A. I ain't speaking about the property at all; I was speaking about the pumping and amount of work.
Q. You were not speaking, then, of the necessity of some one there to care for the property?
A. No, sir.
Q. Do you mean to testify that the same amount of wood used and work done might have kept the entire water out of the mine?
A. I understand there was no pump at the bottom, and therefore it couldn't have reached the entire water in the mine.
Q. The pump couldn't have reached that water so, after the skip stopped, the pump couldn't have raised that?
A. No, sir.

Judge STONE: If we want Mr. Moore again, we may want to recall him on some point. He was our chief engineer there at that time.

337 Redirect examination by Mr. DUNSTAN:

Q. How many engineers were employed at the pump?
A. There were two.
Q. That is, since the summer of 1884?
A. Yes, sir; there were always two there.
Q. One by night and the other by day?
A. Yes.
Q. Were any firemen employed?
A. The engineers used to do the firing.
Q. In the compresser who were employed?
A. There were two boys to run the compressor—one night and one day.
Q. With reference to the man-engine, were the same engineers employed in running the pump the ones who kept the man-engine?
A. Yes, sir; the same ones.

Captain THOMAS WHITTLE, a witness produced, sworn, and examined on behalf of the complainants, testified as follows:

Direct examination by Mr. DUNSTAN:

Q. Where do you reside?
A. At Quincy.
Q. Were you ever employed by the Pewabic?
A. Yes, sir.
Q. And the Franklin?
A. No; not by the Franklin.
Q. Simply by the Pewabic?
A. Yes, sir.
Q. How long were you employed by the Pewabic?
A. About three years.
Q. Beginning when and ending when?
A. Beginning July 1st, 1882, I think.
Q. In what capacity?
A. As mining captain.
Q. How long have you been a mining captain?
A. Since that time.
338 Q. Have you made an examination of the Pewabic mine in the last week?
A. I did, sir.
Q. When was that?
A. Last Monday a week.
Q. With whom?
A. Mr. Bailey, the engineer.
Q. The civil engineer—mining engineer?
A. Yes.
Q. What time did you enter the mine?
A. We entered the mine about 8 o'clock in the morning.
Q. What time did you get up—get out of it?
A. We got out a little before 12, at noon.
Q. How far down did you go?
A. We went down as far as the back of the 26th level—about half way between the 25th and 26th levels.
Q. Why didn't you go down farther?
A. I sent a man down to take the end of the tape. I could see water, and we measured from there.
Q. You sent a man down with the measure?
A. Yes; with the end of the tape—sent him down to the water.
Q. And what level or height in the mine is the water or was it then?
A. It was about the back of the 26th level or 64 feet from the sole of the 25th level.
Q. How deep is the Pewabic mine?
A. They have got a 34th level at the bottom of the mine.
Q. That would be about how many feet below the 26th level?
A. It would be 10 levels, I believe.
Q. From the 26th to the 34th, isn't it?
A. From the 26th to the 34th—10 levels.

Judge STONE: Would it be ten?

A. That would be eight levels.

339 Mr. DUNSTAN:

Q. How many feet to a level?

A. The lower levels are 90 feet; the two upper levels I couldn't say exactly; probably about 85 feet, 80 or 85 feet.

Q. Well, then, from the bottom of the mine up to this point between the 25th and 26th levels the mine is full of water?

A. Yes, sir.

Q. Do you know of any opening leading from the Franklin into the Pewabic, or Pewabic into the Franklin, between the 25th and 26th levels?

A. Yes; there is an opening. We came from the Franklin into the Pewabic between the 25th and 26th levels in the Pewabic, and that would be between the 25th and 24th in the Franklin.

Q. Now what is the distance from this opening that you speak of to the surface of the water?

A. Twenty-six feet on the lay of the lode.

Q. What is the size of the opening in question?

A. Well, I don't know exactly the height of it from the lower part of the opening; it is probably about six feet in width, and then it opens as it goes up.

Q. And would it be sufficient to drain the entire Pewabic into the Franklin?

A. Yes.

Q. Has it been necessary, therefore, in order to keep the Franklin clear of water, to a certain extent, or of this water in particular, to keep the pump going in the Pewabic?

A. I should say so.

Q. Do you know whether it has been necessary to do that or not?

A. It has been necessary to keep the water out; otherwise the water would have gone into the Franklin.

340 Q. Well, then, the water has been permitted to rise up to a point where it was about to run into the Franklin, and there stopped by the operation of the pump; is that it?

A. No; that water has been naturally rising from day to day, I should suppose, from the amount that is in the mine now.

Q. And permitted to rise up to where it is now?

A. Yes.

Q. And it has been pumped in order to prevent an accumulation of water and a flow into the Franklin; isn't that the fact?

A. There is the lower water that accumulates in the mine and the surface water. If that surface water had not been kept out certainly the water would have been flowing into the Franklin before now, but they have been keeping out the upper water, and therefore that has kept the water from going into the Franklin.

Q. Does it require as much pumping and steam to keep the water out from the point where the surface of it now is as to keep the mine entirely free of water?

A. No; it doesn't require so much pumping; not at present.

Q. Do you know of any engine or machine pump in the bottom of the mine—pony pump—that has been used there for the purpose of keeping the water out?

A. I don't know what has been done there since I left.

Q. Previous to the time of your leaving how was it done?

A. There were some air pumps there to pump up the water from the bottom of the mine; before that time we used to take water out with the skip, and when we abandoned those pumps we took it out with the skip after that.

341 Q. What was done with those pumps?

A. I don't know.

Q. How many of them were there?

A. There were three.

Q. Now, do you know how far below the level of the water, if any, the present pumps go?

A. There were two below the level of the water at the present time—the present level of the water.

Q. With present machinery, how far down could they keep the water with the present pumping system?

A. The 18th level.

Q. I guess you don't understand my question. With the present pumping appliances that they have at the Pewabic, how far down could they keep the surface of the water?

A. On the 18th level. There is drawing pumps down to the 18th level.

Judge STONE: That is the surface water, as I understand you?

A. Yes.

Q. This water that has accumulated from below isn't surface water, and that has been gradually rising?

A. Yes.

Q. The pump doesn't reach down to the 26th level?

A. No, sir.

Mr. DUNSTAN:

Q. Did you examine the timbers of the mine?

A. I did; in a great many places.

Q. How did you find them?

A. Some I found in fair condition, and in other places I found them in very poor condition.

Q. Now, what is the general condition of the timber in the mine?

A. The timber, aside from the man-engine, is in very poor shape.

Q. Do you speak of the timbering required to keep the shaft in shape?

A. Yes, and the mine in general.

342 Q. What is the condition of the man-engine timbers?

A. The man-engine is in a fair condition.

Q. And do you refer to the rods and steps?

A. Rods and carriages and timber that makes the man-engine shaft.

Q. Have any repairs been made to the timbering in the man-engine shaft in the last six years?

A. I don't know for certain, no more than I heard that there had been repairs carried along in the man-engine.

Cross-examination by Judge STONE:

Q. The man-engine is in better condition to-day than though it had lain idle?

A. Certainly; the man-engine is in better condition than if it had been laying idle.

Q. Could you see the timbers in the man-engine?

A. I saw the rods and timbers in the man-engine; yes.

Q. Did you see any repairs in the man-engine?

A. There were some. I don't know that there — any repairs more, perhaps, than was necessary.

Q. But you saw some repairs there in the man-engine?

A. Yes.

Q. Where, and what were they?

A. There were some—the last repairs done a few days ago—from the 16th to the 18th level.

Q. What did they consist of?

A. Repairing some of the timbers that carried the man-engine rods—the foundation—what we call the foundation timbers. There is some repairs has been done, from what I heard, at what we commonly call the stays or catches, at one or two places.

Q. Did you notice any repairs to the "fee-bob"?

A. Well, I noticed that the "boss" were looking a little
343 better than they were when I last saw them, and I asked for information and I couldn't get it, so I didn't know.

Q. Didn't you see there was a new limb put onto one of them?

A. I wasn't sure. I made inquiries and couldn't find out for certain, Captain.

(This last question was by Captain Vivian.)

Q. I guess you know it.

A. I don't know for certain; if I did, I would speak of it independent of you, Captain, or any one else.

Judge STONE:

Q. You have no doubt that the man-engine is in better condition to-day by far, notwithstanding that it has been used, than it would have been if laying idle since the stopping of the mine?

A. It is.

Q. It has been for the best interest of the mine that the man-engine should be kept in repair and operating?

A. Yes; it is in better condition.

Q. Well, from the manner it has been working for 5 or 6 years, it would be in better condition?

A. Yes.

Q. The man-engine would have been decayed if it had been laying idle?

A. Certainly.

Q. Now, this water that is in the mine has gradually risen—accumulated from the bottom of the mine, I suppose?

A. I suppose.

Q. The surface water, as near as you can ascertain, has been kept out?

A. Yes.

Q. These pumps never have extended down to this water that is there in the mine?

A. No, sir.

344 Q. The last operation of the mine, the bottom water was removed through the skies, was it not?

A. As far as I know, yes.

Q. Of course, when the mine ceased operation the skip ceased to move and the water has naturally accumulated?

A. Yes, sir.

Q. I suppose, if the water rises up to that opening, it will run through into the Franklin mine?

A. Yes, sir.

Q. And there are no pumps now in shape to prevent that?

A. Not that I know of. I didn't see any.

Q. Now, of course, the keeping out of this water has prevented that water seeking the bottom of the mine; this surface water would have gone down there eventually—worked down?

A. Yes.

Q. There is nothing now to prevent the gradual accumulation of the water from the bottom of the mine, and it is gradually on the rise. Now, what is the distance from the top of that water up to the hole connecting with the Franklin?

A. Twenty-six feet, along the lay of the lode.

Q. Now, as a practical man, is any of the water that is in that mine now—did it come from the surface, in your judgment?

A. That I am not prepared to say.

Q. The appearances are that the surface water has been pumped out, as I understand you?

A. Yes, sir; any other than I have seen where water-marks have been left on the foot wall surface water has been running down probably at the time of the break-up.

Q. How is the surface water gathered so it is reached by the pumps?

345 A. It is gathered by way of what we commonly call gutterings which lead along on the foot side—gathered up from north and south and carried to a place where we can deposit it and take it by the pump.

Q. Do you see any practical way, considering the condition of the mine and the pumps, any practicable way in which the bottom water could have been kept out there, considering that the mine has not been in operation, and no pumps to reach it, without great expense?

A. No; I see none, without you either hoisted it or put in additional pumps.

Q. How did you keep the water out before?

A. With pumps.

Q. You say they kept it out with pumps first and then afterwards with a skip?

A. Yes.

Q. And that involved the running of the skip, of course, to the surface?

A. Certainly.

The MASTER: There is a basin on the 18th level, I take it. This pumping has not been from the lower water at all, only from the surface water on the 18th level.

Judge STONE: That is as I understand it.

Judge STONE:

Q. In order to have kept this skip running during all these years and taken this water from the bottom, it would have been very expensive, would it not?

A. Yes, sir; it would have been expensive, because you would have to keep the shaft in running order and there would be the expense of a direct hoist of this water from the bottom.

Q. As a practical man, you wouldn't have expected Captain Vivian to have done that without means or ability to run that mine, would you? In other words, do you see any practical way
346 in which Captain Vivian could have prevented this accumulation of water in the bottom of the mine short of running machinery essential to have kept the skip going during all these years?

A. No, sir.

The MASTER: Would it be of any benefit to keep that water out? Does it injure the mine—the water being in it?

A. No; the only injury it will be will be the cost of getting that water out, whoever goes to work the property any more.

The MASTER: You would have to raise it many times over if you kept at it?

A. Yes.

Judge STONE:

Q. In other words, it can now be done in a business-like way, by putting in proper machinery and going at it and unwatering the mine?

A. Yes.

Q. What length of time, in your judgment, would it take to unwater that mine, probably?

A. It would all depend on what way you would take it out.

Q. Well, the most practicable way that you, as a mining man, would suggest?

A. Probably, if I suggested one way Captain Vivian or Harrow or some other man would suggest some other way.

Q. I ask for your judgment.

A. If *a* should suggest, I would take it out with pumps.

Q. How long would it take, in your judgment?

A. Well, it might take about three months to get the water out.

Q. I suppose there can't anybody get down there very well to examine the bottom of the mine—those bottom levels—until it is unwatered?

A. No; I don't suppose so, unless they get some diving-bell or fellows that go under water.

347 Q. Of course, the condition of the bottom levels cannot be ascertained until it is unwatered?

A. No, sir.

Q. You say there is an average there of from 85 to 90 feet, in those lower levels?

A. Yes, sir; the maps will show.

Q. There is from seven to eight hundred feet of water there, then, I suppose?

A. Yes.

Q. The testimony is that there are 34 levels?

A. Yes.

The MASTER: And some are 90 and some 85 feet?

The WITNESS: The six bottom ones—I think they are 90 feet.

Redirect examination by Mr. DUNSTAN:

Q. Wouldn't it have been much better for the timbering of the mine if it had been absolutely full of water—for the man-engine and all the timbering of the mine if the mine had been absolutely full of water?

A. The water couldn't reach the man-engine.

Q. I say, assuming that there were no openings into any other property, would it not have been much better for the mine if it had been absolutely full of water?

A. Far better; yes, sir.

Q. Water has a tendency to preserve timber, does it not?

A. Yes.

Q. Now, I take it from the testimony given by you that it is simply surface water that has been pumped by the Pewabic?

A. Yes.

Q. The accumulation from the bottom of the mine has not been pumped out at all?

A. Not as far as back—I think it was in—somewhere around in 1885 they abandoned hoisting the water out with the iron skip.

348 Q. Now, is there anything to prevent their hoisting that water by means of skips—that is, the accumulated water in the bottom of the mine?

A. No, sir.

Q. The same as they did before?

A. Yes.

Q. In other words, if they wanted to preserve the mine for prospective sale would it not have been advisable for them to have kept out this accumulated water in the bottom of the mine?

A. I should suppose so.

Q. Then, I take it from your testimony, that it is necessary to pump up this surface water, in order to prevent an accumulation, in the first place, and an overflow into the Franklin, and also for the use of the boilers in the Pewabic?

A. Yes, sir.

Q. And this pump has to be used in order to get this surface water for the boilers of the man-engine, compresser, and the pump?

A. Certainly they would require water to raise steam and to utilize that water they were pumping out.

Q. Then has all the pumping that has been done been for the benefit of the Franklin instead of the Pewabic?

A. That is a question I am not prepared to answer.

Q. Well, in your judgment—in your judgment has it been for the benefit of the Franklin to have this pumping done?

A. It has, sir.

Q. You speak of the hole between the 25th and 26th levels. When was that hole made?

A. That hole was made, as far as I remember, in 1885; somewhere in 1885.

Q. In 1885?

A. Yes.

Q. Do you know by whom it was made?

A. By the Franklin Company.

349 Q. Were you employed at the Pewabic at the time this hole was made?

A. I was, sir.

Q. This hole was made, then, by the Franklin in driving from their property towards the Pewabic?

A. Yes, sir.

Q. And in the year 1885, according to your recollection?

A. Yes, sir.

Q. That is correct, is it?

A. That is, as far as I remember.

Q. Who was superintendent of the Franklin at that time?

A. Captain Vivian.

Recross-examination by Judge STONE:

Q. What, in your judgment, would it have cost per year to have kept those skips moving and taken the water out of that mine in the bottom?

A. I am not prepared to answer that question just now.

Q. Can you approximate how much it would cost a month and then figure on that, or a day, even?

A. I couldn't just now.

Q. It would have required almost constant work, would it?

A. No, sir.

Q. How many days a month, in your judgment, would it have required the movement of the skip? Could it have been done in that way, by working a number of days each month?

A. I couldn't answer definitely—not just now. I would have to look up the matter to know now just how much water we used to

take out and how much the accumulation of water used to be every 24 hours.

Q. Well, it would have been necessary to have taken it out every month, would it?

A. Yes, sir.

Q. At least every month, which would have involved the necessity of running the machinery that run the skip?

350 A. Yes—that is, by taking it out by running the skip.

Q. That has been as cheap and as practicable as any way—to take it out by the skip?

A. Yes.

Q. All that would have involved a good deal of outlay of money, would it not, during all these years?

A. Well, it would have involved an expense.

Q. Of a number of thousand dollars every year, certainly?

A. No; I hardly think that—a number of thousand dollars every year.

Q. You don't think it would reach a thousand dollars every year?

A. Yes; I suppose it would require a thousand.

Q. Well, it would reach a number of thousands, then, each year. Can you approximate the amount of thousands in a year it would have taken? Get somewhere near it, in your judgment.

A. Not just now I couldn't.

Q. Well, it would have involved an expenditure of more than ten thousand dollars these years that the mine has been lying idle, wouldn't it?

A. Well, it might—close on to that—by keeping the shaft in repair.

Q. It would have been necessary to have kept it in repair to have run the skips?

A. Certainly it would.

Q. And with no money to do — with, if you had been placed there in that condition you would hardly have known how to have done it, would you?

A. If I was in that position probably I should know better then than I know now.

Q. I say with no money to have done it you wouldn't know how to have done it, would you?

A. No, sir.

Q. You couldn't make bricks without straw any more than the Jews could?

A. Certainly not.

351 CHARLES E. BAILEY, a witness produced, sworn, and examined on behalf of the complainants, testified as follows:

Direct examination by Mr. DUNSTAN:

Q. Where do you reside?

A. At the Quincy mine location, Houghton county.

Q. What is your age?

A. 31.

Q. What is your business?

A. Civil and mining engineer.

Q. How long have you been a civil and mining engineer?

A. 6 or 7 years.

Q. During that time where have you followed your profession?

A. Mainly at Houghton—at the Quincy mining location.

Q. Are you familiar with the Pewabic mine?

A. I made an examination of it a few days ago, but I have never done any work in the mine and am not, perhaps, as familiar with it as Captain Whittle.

Q. With whom did you make the examination?

A. Captain Whittle.

Q. And that was when?

A. Last Monday, I think.

Q. What examination did you make? Please state.

A. We went down to ascertain the amount of water, the condition of the timber, and the condition of the mine generally.

Q. What did you find the condition of the mine to be?

A. We found the water within 26 feet of the stope in the Franklin, which would overflow it into the Franklin about 65 feet below the 25th level; I think 64½ feet below the 25th level of the Pewabic.

Q. Do you know of the quantity of water now in the Pewabic below that point?

A. It is a little difficult to estimate it. A rough estimate would probably be about nine million gallons.

352 Q. Did you examine the opening or hole between the Franklin and Pewabic?

A. Somewhat.

Q. What are its dimensions?

A. At the lower part it is about six feet wide, widening as you go up, and there is more or less opening all the way up from there.

Q. You say the first opening is about 5 or 6 feet wide?

A. About six feet wide; yes, sir.

Q. Did you notice the pumps and man-engine?

A. The pump going down in number four shaft to the 12th level and down number five shaft to the 18th level is in very poor condition, entirely unreliable; the timbers are very rotten. It is hardly trustworthy enough to defend on any length of time; if used it would have to be largely renewed.

Q. Has the repairs upon it been any more than simply to keep it running?

A. It didn't look so. I saw very little repairing done. The timbering around the pump rods and the pump rods themselves are very rotten and unreliable; a break in it I should consider very much to be expected at any time.

Q. How far down does the man-engine go?

A. To the 18th level.

Q. How far down do the pump rods go?

A. Down to the 12th level in number 4, down to the 18th level in number five.

Q. What water is taken out of the mine by this pump?

A. Surface water.
Q. Caught at which level?
A. On the 12th and 18th.
Q. Do you know where this surface water is used?
A. Part of it is pumped out of the mine and flows away and part of it is used in the Pewabic boilers.

353 Q. Now, what would be the effect upon the timbering of the mine if it was entirely full of water?

A. The timbering would be preserved much better than if it was left without water. There is a certain amount of moisture in the mine, and the decay goes on when it is drier more rapidly than when it is wetter. We found the timber about at the bottom of the 26th, say around the 24th and 25th, level in far better condition than it was above, though throughout the 26th the decay had made the timber somewhat unreliable. It would answer for temporary hoisting with a small expenditure, but to make a good shaft would require retimbering.

Q. Now, with the mine filled up with water to the 26th level what benefit to the Pewabic is it to have the pumping going on?
A. I see no benefit to the Pewabic of running the pumps.
Q. Then for whose benefit is the running of the pumps?
A. It prevents the water running into the Franklin.
Q. And it is substantially for the benefit of the Franklin?
A. I see no benefit to be derived by the Pewabic. The timber would be better under water. The iron was all taken out below the 26th level, I am told, and the timber wouldn't be damaged, but benefited by it.

Q. Can you estimate the length of time it would take to pump the Pewabic dry at the bottom or take out the water from the bottom?

A. Well, that would depend upon the appliances. The pump that is there is hardly reliable enough to be trusted for it. It would take some three months and a half with that pump, putting in small pumps below to hoist to the 18th level; it would take some three months, with a good water skip run the entire time.

Q. Now, about what time would be required to keep out
354 this surface water that you testified to?

A. I am told they run the pump about six hours a day for the surface water alone.

Q. About how many cords of wood would it take to do that work?
A. I haven't estimated it.

Cross-examination by Judge STONE:

The MASTER: When you speak of surface water you don't mean the surface water that runs from the top, but that oozes out from the 18th level—it doesn't run in from the top?

A. By the surface water we mean all that comes in above the rock into the opening as mined. The rock catches the surface water and carries it down over the top of the bed-rock, the other going down

through porous portions of the trap and getting into the mine below. Every drill hole that we put in very deep down brings us a certain amount of water, coming down through porous portions of the trap.

Judge STONE:

Q. The surface water would gradually have sought this other water, I suppose, and filled up the mine had there been no pumping done of the surface water?

A. Yes; I think there must have been 4 or 5 times as much surface water as there was water from below.

Q. And, I understand you to say, that would have settled and found its way down?

A. Beyond question.

Q. There were other openings above the 25th level, between the Franklin and the Pewabic, in nearly all the levels above, was there not?

A. Yes, sir; it appears to have been broken through all the way up.

355 Q. Are you acquainted with the history of that matter?

A. I am not.

Q. Whether, in your judgment, the ground appears pretty rich there.

A. From the map I should suppose it was. I did no work there.

Q. As to whether it was so rich that both companies were after it and both have broken through at different points from time to time in about every level from there up, do you know what the facts are about that?

A. I cannot state.

Q. You say that in nearly every level from the 25th up there is an opening?

A. That is my idea from the map alone.

Q. And had there been no pumping of the surface water that mine would have gradually filled up to openings even above long before that?

A. Up to the same height; yes.

Q. In other words, the Pewabic would long ago have been completely full had it not been for openings through?

A. Yes.

Q. And you don't know who put those in?

A. No.

Q. If it come to the tenth level it would have filled up to there and filled the two mines to the surface long before this?

A. Yes, sir.

The MASTER: What did I understand; the lower water is up to the 26th level?

Judge STONE: Yes; between the 25th and 26th.

The WITNESS: With regard to this being all lower water, I understand they run the pump, pumping out the surface water. How much surface water there is I don't know; it is probably small.

Q. There is probably some reaches there?
A. Yes, sir; it would be difficult to avoid it.

356 Redirect examination by Mr. DUNSTAN:

Q. How far is it from the hole to which allusion has been made to the next opening above from the Franklin to the Pewabic?
A. There being a small break from the 21st to the 24th level, as appears from the map, the water would not flow through were it not for this opening in the 25th level. Above that to the surface, apparently, it would flow through in every level.
Judge STONE: And I understand you to say each mine would have been filled long before this, even if no pumping had been done—even without pumping from the 26th level—on account of these openings above?
A. Yes, sir.

Mr. DUNSTAN:

Q. What is the distance from this hole to the next hole above it?
A. I should judge from the appearance of the map that this hole was about 85 feet in length on the slope.
Q. In height?
A. In height on the slope, and that there was some 270 feet above that to the next break.
Q. Above the top of that?
A. Yes.
Q. 270 feet to the next break, between the two properties?
A. I should judge so from the appearance of the maps, but I have not studies the question.

Further hearing adjourned to Peter White's office, at Marquette, Michigan, at three o'clock p. m. of Monday, July 28th.

MONDAY, *July 28th*—3 o'clock p. m.

Met, pursuant to adjournment, at the office of Peter White,
357 special master, in Marquette, Michigan, all the parties being in court by their respective counsel, and further taking of testimony resumed.

DANIEL L. DEMMON, a witness produced, sworn, and examined on behalf of the complainants, testified as follows:

Direct examination by Mr. DUNSTAN:

Q. Where do you reside?
A. Boston.
Q. How long have you lived there?
A. A year ago in November. I have lived in the vicinity of Boston for 40 years.
Q. You are the same Daniel L. Demmon who testified in this case six years ago at Houghton?
A. Yes, sir.
Q. Have you had any position with the Pewabic Mining Company since January 1st, 1884?

A. I have always held the position and acted as treasurer of the company.

Q. Any other position?

A. Secretary and director.

Q. Since when first?

A. Since 1870 or 1871, I think, first.

Q. And you still occupy those two positions?

A. Yes, sir.

Q. And the Eastern office of the company, I understand, is located in Boston, Mass.?

A. Yes, sir; 19 Congress street.

Q. Have you the books of the Pewabic Mining Company usually kept in the Eastern office, in the Boston office, with you?

A. I have the cash book, journal, ledger, and trial balance, showing all the business transactions of the company.

Q. Since when?

A. Well, for quite a number of years. I couldn't tell exactly without looking at the books.

Judge STONE: Since before 1883, I presume?

A. Yes, sir.

Mr. DUNSTAN:

Q. Are these all the books that have been used by the com-
358 pany in its offices—in the Eastern office—in the matter of the accounts of the Pewabic Mining Company?

A. Yes, sir.

Q. During those years?

A. All the mercantile business; in fact, all the business.

Q. Mercantile and other business?

A. Yes, sir. Such a book as a check book I haven't got. You don't mean that, I supp-se?

Mr. DUNSTAN: No. Do these books that you now have contain a statement of the present indebtedness of the Pewabic Mining Company?

A. As far as mercantile transactions are concerned, there are several bills which we owe, which I do not know how much they are; would be unable to tell under any circumstances until they are rendered.

Judge STONE: The books show all that anything shows—that any book shows?

A. Yes, sir.

Q. All that is of record? There are certain outstanding bills that have not yet been rendered?

A. Yes, sir.

Mr. DUNSTAN:

Q. What bills are outstanding, not rendered?

A. Mostly for legal services.

Q. Due what persons?

A. Henry J. Stevens, Thomas H. Talbot, Thomas H. Perkins,

myself, Judge Stone, Stone & Gray, Mr. Ostrander, F. A. Baker. That is all I call to mind now.

Q. All of those persons mentioned by you, with the exception of yourself and Mr. Stevens, have been counsel in the case, I believe?

A. Yes, sir.

Q. In this present case?

A. Yes, sir.

Mr. OSTRANDER: Was that answer made to cover your
359 claim for services as officer of the company—secretary and treasurer?

A. No, sir; I have a claim against the company for that.

Mr. DUNSTAN:

Q. Will you please refer to the books and state from them the indebtedness against the Pewabic Mining Company at the present time, giving the amounts and names of the parties to whom the money is due?

A. The trial balance, which is made up to December 31st, 1889, shows there is due sundry persons for forfeited stock $1,855.14. There is due the loan account $30,000, and there is also due profit and loss account $365, making a total of $32,220.29. That will be considerably increased by the interest due the Franklin Mining Company on a loan of $30,000, which was made, I should judge here, in November, 1885. The loan was made at the rate of seven per cent. per annum.

Judge STONE: What comprises that $32,220.29 is chiefly, then, the debt to the Franklin Mining Company?

A. Yes, sir.

Mr. DUNSTAN: And the total indebtedness of the Pewabic Mining Company December 31st, 1889, is how much?

A. $32,220.29, as shown by the books.

Judge STONE: As shown by the Boston books. Of course that don't include the little matter we gave you the other day at the other end.

Mr. DUNSTAN:

Q. Of that how much is the Franklin loan?

A. $30,000 and interest from the date, which I am not able to give you. I should judge it was some time in August, 1885.

360 Q. Was that loan made in one lump or was it in parcels?

A. It was made to meet some drafts that were drawn to pay the indebtedness of the company—to redeem it when it was sold at sheriff's sale—and I should judge there was about twenty-five thousand dollars made in August, and the balance was paid to me as the outside drafts came in. The amount, however, is enough to make $30,000 in December, 1886.

Q. Do you know the amount of the judgment that this redemption was made for?

A. As near as I remember, I don't know exactly, if that is what you wish to know. I don't know exactly; it is on Vivian's books.

Q. Wasn't it in the neighborhood of about ten thousand dollars?

A. No, sir; it was twenty-four or twenty-six thousand.

Q. You don't know the judgments?

A. No, sir; but I am very sure the drafts were over $24,000, to the best of my memory.

Judge STONE: Those were judgments, were they not, in the Houghton circuit?

Mr. DUNSTAN: Yes; I had something to do with them.

Q. Now, what are the other items of indebtedness?

A. I couldn't tell you anything about the amount of them.

Judge STONE: He asks you as to these other matters you have mentioned.

A. 1,880 odd dollars was unpaid dividends; dividends that had been declared and parties not called for them, $1,885.14. I don't know where he gets the fourteen cents. I know where it was now; it was stock sold at auction for parties that didn't pay the assessment, and after crediting them with assessments that amount was left to the credit of sundry parties.

Q. Do you know who those parties are?

A. No, sir.

361 Q. Would the books show?

A. Yes; the books would show.

Q. Where are those books that will show that indebtedness?

A. Do you want to know the names of the parties?

Q. Yes.

A. I think that is kept on an assessment book where the stock is carried out that way, and then the balance is carried forward from that. It don't show on the journal here.

Q. You have no book here, then, that contains the names and amount due to each of those parties?

A. Not of that. That appears on—we have an assessment book and where the assessment is levied; every man's assessment is levied there, and when the stock was sold he was credited with the amount.

Q. And the total amount of that indebtedness is how much?

A. $1,885.14.

Q. Have any of those parties ever made a demand for that money?

A. There was one in the other day.

Q. Who was that?

A. I don't remember what his name was; came through a broker.

Q. Do you know the amount?

A. 14 shares; I don't know the amount.

Q. The assessment of what year?

A. Of this, $1,885 commences in 1884. Previous to that it was $1,900.45 to May—that is, October, 1884; previous to that it went back to April, 1884, and in April, 1884, it was $1,901.08; that went back to February, 1884, and it was $1,940.45; that went back to January, 1884, $1,952.95; December, 1883, it was $1,817.75; November, 1883, it was $2,400; October, 1883, it was $3,268.75.

Judge STONE: Those come from different assessments?

A. I should say so; yes, sir.

362 Mr. DUNSTAN:

Q. How did these parties become entitled to these monies in consequence of the assessment? Will you explain, please?

A. There was an assessment of $2 a share and the stock sold for $3. They were entitled to $1.00 a share less the cost of the auctioneer and interest. That would amount to about eighty-five cents a share to them.

Q. In other words, the delinquent stock is placed on the market and sold to the highest bidder?

A. Yes.

Q. And if you realize more than the amount of assessment and expenses the balance is credited up to delinquent stockholders?

A. Yes.

Q. And that is how the various sums come to be credited to the individuals in question?

A. Yes.

Mr. DUNSTAN: We wish you to furnish to the special master the names of the parties entitled to these sums, the dates when they became entitled to them, and the assessments under which they became entitled to them. That you will furnish, will you?

A. Certainly.

Q. Are there any other items of indebtedness against the Pewabic Mining Company?

A. Not at all that I know of. That is all the books show.

Q. Now, to get back to the loan to the Franklin. That loan was made in 1885, I understood you to say?

A. August, 1885.

Q. The existence of the corporation terminated April 4th, 1883; I believe that you know to be a fact—you know it now to be a fact?

A. Yes, sir; I know it now.

363 Q. And you knew that to be a fact in the summer of 1884, did you not?

A. I don't remember the time.

Q. At the time the examination took place at Houghton you knew of it?

A. At the time of the annual meeting that was called for the purpose of extending the charter, whenever that was.

Judge STONE: That was the Boston meeting?

A. Yes.

Mr. DUNSTAN: I think it was in March, 1884.

Judge STONE: It is frequently referred to.

Mr. DUNSTAN:

Q. What was your object in making the loan to the Pewabic, knowing that the corporation was out of existence as a corporation?

A. I can say we were advised to by our attorneys.

Q. Did they give you any reason why it should be done?

A. I believe they considered it important that the property should be protected.

Q. Who were your attorneys advising you?

A. Chandler and Gray.

Q. Acting on their advise, you made this loan to the Franklin?

A. Yes, sir—that is, the Franklin loaned the money to the Pewabic.

Q. I suppose the Franklin has never made any effort to get the money from the Pewabic?

A. Not to my knowledge.

Q. What office did you hold in the Franklin at the time the loan was made by the Franklin to the Pewabic?

364 A. Treasurer and secretary, and also a director, I think.

Q. And you have been secretary and treasurer of the Franklin since what time?

A. 1871, I think; 1871 or 1874.

Q. Continuously to the present time?

A. Yes, sir.

Q. Now, from the books that you now have, can you state the credits and assets of the Pewabic Mining Company April 4th, 1883?

A. No, sir.

Q. Why not?

A. I can tell you the trial balance. Yes; that is all I can tell. What month did you say?

Q. On April 4th, 1883; the time the corporation terminated it-existence.

A. March 31st, 1883, it shows a balance of cash on hand, $5,896.77. There was mine agents' drafts unpaid, $21,309.80.

Q. I am speaking of the credits and assets now.

Judge STONE: That represented indebtedness, did it?

A. Yes; drafts in transportation and accepted. We owed forfeited stock, $1,541.50, and we owed borrowed money, $67,500. That was March 31st, 1883.

Judge STONE: That is as near as you can approach April 4th, 1883, is it?

A. Yes, sir.

Q. Have you given all?

A. Yes; that is all. There is one small item of $341.50 of profit and loss. I don't know what that is. It has been carried through the books for years and years, but it is a nominal sum, anyway.

Q. Those loans before the first of January, 1884, became considerably reduced, did they not?

A. January 1st, 1884, the loan account was $49,751.02.

365 Q. How much were the drafts?

A. $23,801.72.

Q. The forfeited stock due then was how much?

A. $1,952.95.

Q. Do you remember what the balance of assets over liabilities was Jan. 1st, 1884?

A. I don't.

Q. Do the books show?

A. I think we rendered an account at that meeting?

Q. I speak of Jan. 1st, 1884.

A. I have nothing here to show.

Q. Do any of your books show?

A. No, sir.

Q. Now, Jan. 1st, 1884, you made a report to the stockholders, you remember, and it was introduced in evidence six years ago at the time of the hearing before M. H. Maynard, and it shows a balance of assets over liabilities of $39,681.61. I wish you to indicate to me on the books of the company this balance of assets over liabilities. It says here: Statements of assets and liabilities: Copper, 504,652 pounds, $75,066.99; cash on hand, $13,093.35; due from assessments since paid, $14,148; supplies at the mine, $53,828.42, making a total of $144,436.76.

Mr. OSTRANDER: From what page are you reading?

Mr. DUNSTAN: Page 18 of the Supreme Court Record.

The WITNESS: The liabilities were: Loans, $55,751.02; drafts outstanding, $23,835.91; forfeited stock due, $1,818.75; account for November, December, $1,564.74; due for freight, $258.48; liabilities at the mine, $21,526.25.

366 Q. Didn't you call off liabilities for loans?

A. Loans, $55,000.

Q. That was Jan. 1st, 1884; that was the statement at that time. Was it taken from your books?

A. Yes; taken from my books and the books at the mine.

Q. I understand you now say the amount of the loan Jan. 1st, 1884, was how much? You stated a moment ago that the loan Jan. 1st, 1884, was $49,751.02.

A. There may be something in the mine account there. He picked those out.

Q. Are you reading from 1884 there from your trial balance?

A. Yes, sir; Jan. 31st, 1884, and the other is Jan. 1st.

Q. I want Jan. 1st, 1884, and Dec. 31st. Then the last items you were reading a moment ago were for Jan. 31st instead of Dec. 31st?

A. Yes.

Q. Read over, please, assets on hand Dec. 31st, 1883.

A. Cash on hand, $1,393.35. A good many of those accounts in making up the yearly trial balance are approximated. The mine agent's drafts outstanding, $23,825.91; forfeited stock, $1,818.75; the loan account is $55,751.02; due for assessments, $25,852.

Q. That is what date, you say?

A. December 31st.

Q. Now, let me call your attention to a discrepancy. It says here: Due from assessments since paid, $14,148.00. What date is that?

A. Jan. 1st.

Q. What did you say it was, $25,000?

A. That is due. We received $25,852.00, and the balance is due.

Q. How much is due?

367 A. Due from assessments since paid, $14,148. That makes the $40,000.

Mr. OSTRANDER: A dollar a share?

A. Yes, sir.

Q. You had on hand, in the shape of copper, how many pounds?

A. I have nothing to show whatever here.

Q. It is stated here at 504,652 pounds, estimated at $75,066.99; that you say is correct?

A. Undoubtedly that is correct. I have nothing to verify it.

Q. In the report of Jan. 1st, 1884, you stated the supplies at the mine amounts to $53,828.42. Was that correct?

A. That was undoubtedly taken from Vivian's account. His books would show that.

Q. Taken from the inventory sent down by the agent?

A. Yes.

Q. Then the balance of assets over liabilities was $39,681.61 Jan. 1st, 1884, or Dec. 31st, 1883. How much money is now on hand?

A. At Boston?

Q. Yes, sir.

A. Dec. 31st, 1889, there was $695.95, when I left. I think he told me there was about forty-odd dollars.

Q. You were informed there was about forty-odd dollars?

A. Yes, sir.

Q. What assets are there at the present time?

A. At Boston?

Q. Yes.

A. Nothing.

Q. No assets at Boston?

A. Nothing but that money—less than $100—whatever it is.

Q. Any safe?

A. No, sir; we hired the safe.

Q. All the assets of the concern are at the mine?

A. Entirely.

368 Q. You can state from the books, then, the assets of the concern since January 1st, 1884, were disposed of?

A. In Boston?

Q. Yes, sir.

A. It was entirely in copper from time to time, whenever we got a chance to sell it. I couldn't tell from this.

Q. Can you tell from your books here the sales of copper at different times and the amount realized?

A. No, sir.

Q. Why not?

A. I can in piecemeal, if you want it that way.

Q. How long will it take you?

A. January 3rd, 1884, we received from the Calumet and Hecla Mining Company, on account of copper, $263.45; January 11th, received $13,452.20.

Q. Will you state the number of pounds, amount realized, and dates?

A. January 11th, 89,308 lbs., $13,452.20. January 3rd it says, Balance due on pool is paid by Calumet and Hecla; that is all it says. It was the balance due on that account. January 30th, 25,000 lbs., sold at 15 cents, $3,770; February 12, 7,500 lbs. of copper, sold for $1,131; February 21, 56,067 lbs., sold for $8,455.05;

March 21, 1884, 50,000 lbs., sold for $7,540; March 31st, 50,000 lbs., sold for $7,540.

Judge STONE: Twice?

A. Yes; two items.

The WITNESS: April 30th, 100,000 lbs., sold for $15,080; May 13, 50,000 lbs., sold for $7,040; June 30th, 75,110 lbs., sold for $10,574.40; July 12, 7,647 lbs., sold for $1,076.58; July 31, 42,238 lbs., sold for $5,946.32; August 12th, 2,500 lbs., sold for $352; Aug. 21, 14,329 lbs, sold for $2,077.06; Sept. 11, 1884, 11,392 lbs., sold for $1,603.88;
Sept. 22, 23,750 lbs., sold for $4,752; Sept. 26th, 16,250 lbs.,
369 sold for $2,125.50; October 1st, 23,750 lbs., sold for $3,106.50;
Oct. 31st, 10,000 lbs., sold for $1,308; Nov. 11th, 10,000 lbs., sold for $1,308; Nov. 21st, 6,250 lbs., sold for $817.50; December 9th, 18,750 lbs., sold for $1,798.50; Dec. 11, 10,000 lbs., sold for $1,208; Dec. 22nd, ditto, 10,000 lbs., $1,208; Dec. 31, 10,000 lbs., sold for $1,208; January, 1885, 8,027 lbs., sold for $1,049.51. I guess that is when we shut up shop.

Q. That shows the total amount of copper—ingot copper, I presume—sold by the Pewabic?

A. It was not all ingot. I see some was case.

Q. Sold by the Pewabic between January 1st, 1884, and the present time?

A. Yes, sir.

Q. Were there any other assets disposed of by the Pewabic from January 1st, 1884, down to the present time?

A. Not in Boston.

Q. Please state the amount, in pounds, of copper sold, the amount realized, and date from the expiration of the charter of the company, from April 4th, 1883, the time of the expiration of the charter, down to January 1st, 1884.

A. The first item is April 21st, 1883, 30,000 lbs., sold for $4,575; April 22nd, 45,000 lbs., sold for $7,236; April 25th, 25,000 lbs., sold for $4,020; May 25th, 50,000 lbs., sold for $7,625; June 13th, 50,000 lbs., sold for $7,540; June 21st, 50,000 lbs., sold for $7,540; June 30th, 13,567 lbs., sold for $2,068.97; June 30th, 16,433 lbs., sold for $2,506.03; June 30th, 20,000 lbs., sold for $3,016; July 16th, 60,000 lbs., sold for $9,150; July 21st, 40,000 lbs., sold for $6,032; July 31st, 50,000 lbs., sold for $7,540; Aug. 11th, 20,000 lbs., sold for $3,016;
Aug. 16th, 30,000 lbs., sold for $4,575; Aug. 22nd, 50,000 lbs.,
370 sold for $7,540; Aug. 31, 50,000 lbs., sold for $7,540; Sept. 11th, 50,000 lbs., sold for $7,540; September 29th, 50,000 lbs., sold for $7,540; October 19th, 50,000 lbs., sold for $7,540—three items exactly alike; Oct. 31st, 50,000 lbs., sold for $7,599.50; Nov. 12, 17,160 lbs., sold for $2,574; Nov. 21st, 50,000 lbs., sold for $7,540; December 11th, 22,701 lbs., sold for $3,405.15; Dec. 21, 29,351 lbs., sold for $5,902.65; Dec. 27th, 1,250 lbs., sold for $187.50, and the next item is January 3rd.

Judge STONE: That closes up the year?

A. Yes, sir.

Mr. DUNSTAN:

Q. What other items of assets were disposed of from April 4th, 1883, to January 1st, 1884?

A. In Boston?

Q. Yes, sir.

A. Nothing.

Q. Was there any other assets disposed of by the company anywhere that you have knowledge of?

A. Not at all.

Q. Except those you testified to?

A. No, sir.

Q. What has become of the monies realized from the sales of the copper that you have just testified to?

A. As far as I can say, it has gone to pay drafts at the mine.

Q. Mine drafts?

A. Yes.

Q. Have you any account here that will show when and the amounts of such mine drafts?

Judge STONE: Those things will all appear in our statement, but we want you to put in whatever you desire here now.

The WITNESS: April 30th, 1883.

Judge STONE: Paid mine drafts—shall I call that?

The WITNESS: Yes, sir. For the month of April, 1883, $20,285.42; in the month of May, $18,550.43; in June, $18,222.06; in
371 July, $15,981.44; in August, $31,009.54; in September, $10,883.77; in October, $18,596.97; in November, $28,425.89; in December, $15,742.44; in January, $21,558.62; February, $25,763.79; March, $10,380.64; April, $14,609.16; May, $1,840; June, $3,000; July, $5,288.70; August, $5,000; September 1st, $2,007.03; August 31st, 1885, $20,368.98, paid for mine account; I don't know what that item is.

Q. What year is this?

A. In 1885.

Q. Are all those months, from the first of January, in 1885—after leaving December you commenced with January—is that 1885 or 1884?

A. 1884.

Q. Then you skip from September 1st to August, 1885?

A. Yes, sir; December 31st, $15,742.44. That was the last month of 1883. January 1st, 1884, $21,558.62. Then they skip from September 1st, 1884, to August 31, 1885. He has got another item there, August 31st, 1885, in addition to those drafts, $9,698.07, and he explains it this way: "The following drafts not accepted, returned and protested for non-payment, $9,698.09."

Q. That was in what year?

A. In August, 1885.

Q. That is about the time of the judgments against the company, isn't it?

A. Yes; Sept. 30th, 1885, $2,041.73; October, $643.69; November, $1,383.19.

Mr. OSTRANDER: November, 1885, is the last item?
A. Yes, sir.

Mr. DUNSTAN:

Q. Of mine drafts?
A. Yes, sir.
Q. Any other payments made out of the money realized from sales of copper to which you have testified?
372 A. There is the expense account. Shall I give it to you for months or in the lump?
Q. Have you the items of expense?
A. It is charged here expense account by months.

Judge STONE: We shall ask the privilege of filing a complete statement. I take it the master will allow it.
The MASTER: Yes, sir.
Judge STONE: We think this is unnecessary, but are perfectly willing counsel should go into it; we have no objection to it at all.

Mr. DUNSTAN:

Q. You have testified that the books show January 1st, 1884, a balance of assets over liabilities of $39,681.61, or rather on the 31st day of December, 1883. I wish you to name the book and page on which this item can be seen.
A. I don't think you can find it on any.
Q. I thought you indicated it a moment ago, the balance?
A. No, sir; I said it was made up from the balance of assets of the mine—cash on hand and copper on hand. I think very likely we can give it to you just as we did make it up, but it don't show on any book.
Judge STONE: Some of those matters, I suppose, are approximated?
A. Yes, sir; the valuation of the copper, for instance.

Mr. DUNSTAN:

Q. You say the balance isn't struck on the books?
A. No, sir.
Q. Have you been receiving a salary from the Pewabic since January 1st, 1884?
A. I received $1,000, as I remember, and that is all.
373 Q. Covering the entire period?
A. Yes, sir.
Q. What expenses in Boston have you had during that time?
A. Merely charged a small sum to cover the share of the office expenses—rent.
Q. How much a year?
A. About $30 or $35 a month.
Q. That would be the Pewabic's share?
A. Yes.
Q. Does that include book-keeping services?
A. Yes, sir.

Q. Includes the services of a book-keeper as well as office rent and furniture?

A. Yes, sir; for instance, for July, $21, and August, $77, and October, $45; Nov., $26, and December it was $82. It has averaged $35 or $40 a month.

Q. Have you among the papers here to-day the inventory of the Pewabic property of 1884 and of 1883?

A. No, sir; I have not got it at all.

Q. No inventories at all of the Pewabic?

A. No, sir.

Q. Where are those kept?

A. At the lake.

Q. Do you know whether they are there now or not?

A. They must be there.

Q. They have never been sent to the Boston office?

A. We have a copy, I am very sure, at the Boston—.

Q. Of the inventories for each year?

A. Yes, sir.

Q. Do you know when the last inventory was taken?

A. Yes.

Q. Will you produce those inventories—those copies of them—when you send in your statement?

A. Yes, sir; certainly.

Q. Now, you speak of the indebtedness to the Franklin on a loan made by it to the Pewabic of $24,000 odd dollars?

A. $30,000.

Q. Was that loan made for any other purpose than to pay
374 judgments against the Pewabic?

A. Not to my knowledge.

Q. I want to call your attention particularly to that, as to whether some part of that wasn't to pay indebtedness that had not yet gone into judgment. I don't know what the facts are, but I have the impression the judgment wasn't as large as you think, but that there was certain outstanding debts that existed when the charter expired.

A. I know it all went to pay the debts of the company. By tracing it up I could tell what it was. I had that impression; that is all. I wouldn't want to swear positively whether it did go that way or not.

Judge STONE: We can ascertain what amount was in judgments. They are all matters of record up there in the court.

Mr. DUNSTAN:

Q. Have you any record in your office or with you to-day showing the amount of judgments and claims that you have paid that was a part of the $30,000 loan?

A. I think Vivian paid those and drew on us for the amount.

Q. Are you sure, with reference to that?

A. No, sir; I am not positive; I have that impression. I know he did draw once for them, and I had no money whatever and I let them go back, and to the best of my knowledge—to the best of

my remembrance—the account was settled up there and we let it go back.

Judge STONE: Suppose you let him state the date of the loans from the Franklin that aggregate $30,000.

The WITNESS: It shows that August 3, 1885, the Franklin
375 Mining Company advanced $17,000; Aug. 17, $8,000; Sept. 10, $2,000; Oct. 2nd, $1,000; Nov. 14, $1,000; May 12, 1886, $1,000, aggregating $30,000.

Mr. DUNSTAN:

Q. Now, you have another item—Howard bank, April, 1885. Is that still outstanding?

A. No; it is paid, you see there. April 1st, 1885, the concern owed the Howard bank $5,000; June 9th, 1885, it paid $2,000, and August 4th it paid $3,000.

Q. Then there is another item of $300 in favor of D. L. Demmon. That has been paid November 3, 1885?

A. Yes, sir.

Q. Have any new accounts been opened with the Pewabic Mining Company since the expiration of the charter of April 4th, 1883?

A. What do you mean by new accounts?

Q. Any new accounts at all.

A. No more than our legitimate business.

Q. Simply running the mine, the usual accounts that you had previous to that time?

A. The same. The business continued in the same manner for some time.

Q. Any new accounts opened since March, 1884?

A. No more than before.

Q. And the same as before, I presume?

A. Yes.

Q. Down to the time you ceased to do business as a mine?

A. Yes; the business was continued exactly the same right straight along until the mine closed down.

Q. Do you remember the date of that, as to when that mine was actually shut down?

A. I don't know exactly the time.

Q. Do you know whether or not there is any agreement between the Pewabic and Franklin Companies with reference to the operation of the Pewabic pump, man-engine, and compressor?

376 A. Any written agreement?

Q. Any written or oral agreement.

A. Not to my knowledge. There is no written agreement. I never knew of one.

Q. Any agreement, then, made between the two companies with reference to the operation of those three machines was made by Captain Vivian as agent of the Franklin and as a director of the Pewabic?

A. Exactly. He had the whole charge of it.

Mr. OSTRANDER: Do you mean to answer that question that way, that he made it as a director of the Pewabic?

The WITNESS: As I understood it, he had charge of the Pewabic Mining Company's property.

Mr. OSTRANDER: Was left in charge by the court, you understand?

A. By the court, as I understand. He was left in charge there by the court to take charge of the property. That is the way I always understood it.

Mr. DUNSTAN:

Q. When was the last transfer of stock on the books of the Pewabic?

A. Within a few days—a short time.

Q. You still take up old certificates and issue new on sales of stock?

A. We always have. If any one presented the stock, we have always made a transfer.

The MASTER: I would like to know what evidence the
377 Franklin Mining Company have of this indebtedness of $30,000.

The WITNESS: I think they have a note.

The MASTER: One note?

A. One note, to the best of my remembrance.

The MASTER: You don't know what the date of it is?

A. No, sir.

Mr. DUNSTAN:

Q. You don't remember the date of the note, I believe?

A. No, sir; I don't.

Q. Does it state anything about interest?

A. Interest at seven (7) per cent.

Q. Was it a demand note or time note?

A. I think it was a demand note.

Mr. DUNSTAN: Now, we want, of course, such a statement as has been intimated here. We will offer in evidence those books, the trial balance, cash book, ledger and journal, and the draft book, of the Pewabic Mining Company kept at the Boston office.

The master here orders that the statement from Mr. D. L. Demmon be produced here by Monday, the 18th of August, with the books to verify the same.

Cross-examination by Judge STONE:

Q. You stated that you had received but $1,000 as salary during all these years?

A. Since 1884.

Q. Do you mean to have us understand that that is all you claim for services?

A. No, sir; I claim my salary.

Q. And you expect to make a claim for that at the proper
378 time, do you, as a claim against the Pewabic?

A. I certainly do.

Q. What have your services consisted of during all these years?

A. I have had charge of selling the copper and charge of the books. I have done all, except the details of book-keeping, of the business of the company.

Q. You have attended to the Boston end of the business, which embraces the selling of the copper and doing the general mercantile business for the firm there?

A. Yes.

Further cross-examination by Mr. OSTRANDER:

Q. What has the management of the Pewabic Mining Company done generally since April, 1883?

A. Everything in the regular routine of business that they did before. They carried on the business regularly and systematically. When the mine shut down I asked counsel if it was my business to transfer stock, receive it and transfer it, and he said he thought the best thing we could do was to go right straight along, the same as though the business of the company was in force.

Q. Whatever the reason was, that is what you have done?

A. Yes, sir; acting under counsel.

Q. And by that means, as I understand it, you have operated, up to a certain time at least, the Pewabic, mining copper, employing men, selling the product at the mine, and taking care as well of the debts which existed in 1883 as those which have been made since?

A. Precisely; everything has been done as though the company was in existence, excepting mining copper.

Q. Do you know when you finally stopped mining?

379 A. I couldn't tell the date. The last sale of copper is the only guide I have, and I presume it would be some six weeks before that.

Q. Mr. Vivian could tell, I presume?

A. Yes; he could tell exactly.

Q. What has been done at the mine office generally before shutting down, since April, 1883?

A. Captain Vivian has had full charge, and his instructions were, as I understood, to take charge of the property just the same as though it was going to work the next day. He has done ev-rything to preserve the property for the stockholders.

Q. That is, since you shut down the mining?

A. Yes, and before, too. The property has been kept in good shape, as you can see, and nothing allowed to go to waste. The Franklin have used the machinery and paid for it every month—settled their account every month.

Q. Are you yourself familiar with actual mining operations?

A. Only in a general way.

Q. Are you familiar with the mine itself; have you visited it since 1883?

A. I have been there once a year at least.

Q. And know generally what has been done there?

A. Exactly.

Q. Do you know generally in what respect, if any, the mine has been used or extended since April, 1883?

A. Extended?

Q. Yes.

A. I don't think the mine itself has been extended at all. There is no new openings. I know the machinery and all the buildings and everything else has been kept in good repair.

Q. But no new ones built?

A. Not to my knowledge.

Q. No new machinery built?

A. No, sir.

Q. Underground what has been done?

380 A. Until we were ordered to shut down the business was carried on exactly as before.

Q. Do you know whether in doing that business as you did it before money was expended in opening and developing the mine?

A. Certainly; I know it was, because I paid the drafts for it and received the copper that was taken out.

Q. Do you know whether that development was done in a miner-like way and as you would have done it if the corporation was running right along?

A. I haven't the slightest doubt but what it was done in the very best manner.

Q. Can you approximate what that cost, for simply developing the mine?

A. I don't think I am competent to do it.

Q. Can Captain Vivian do that?

A. He can, certainly, to a dollar, what every foot of it cost.

Q. How do you communicate with the mine in a business way? How do you know at Boston what is done at the mine?

A. We have letters from once to twice a week giving a report of what has been done.

Q. It is done by correspondence, then?

—. Yes; anything important, of course. We have a wire.

Q. How full information do you get at Boston or have you had at Boston of what was done at the mine?

A. I presume we are posted nearly all the time as to the whole of the mine.

Q. Does your information give you anything in detail?

A. No, sir; it does not; the cost sheets give us that.

Q. And those are sent to you at Boston?

A. Yes; a copy of them.

Judge STONE: How often?

A. Once a month.

381 Q. You spoke a moment ago of operating the mine as a going corporation until you were ordered to shut down. What do you mean by that?

A. Well, some process of court or law stopped all work up there.

Q. You understood the court directed you to stop?

A. Yes.

Q. And you stopped?

A. Yes; of course.

Q. And since that time do you know what has been done in the mine, excepting the use of certain machinery?

A. Nothing at all in the way of opening.

Q. No development at all of the mine?

A. Nothing at all; not on our side.

Judge STONE: There have been some supplies sold by the agent there, I suppose?

A. Exactly.

Q. Which will appear in the statement?

A. Yes; he sold supplies to pay the taxes.

The MASTER: The taxes of 1889 have not been paid, have they?

A. I don't know, sir.

Q. Do you know anything about what it has been worth for Captain Vivian's services at the mine since it was shut down?

A. I don't know.

Q. Do you know what they have been worth?

A. No, sir; I am incompetent to say what they have been worth.

Q. You are not familiar with that?

A. No, sir; I don't know how much time he has devoted to it.

Judge STONE: He has collected something for rents, I suppose?

A. Yes.

382 Q. And all that has been accounted for?

A. There is no question but what his accounts were correct. I asked him that when he was down to the city, and he said every cent had been accounted for that he had received and spent.

Redirect examination by Mr. DUNSTAN:

Q. You say there are some other books in the Pewabic office belonging to the company besides these?

A. There is the copper book.

Q. Anything else?

A. And the stock books.

Q. Anything else?

A. Stock ledger, and stock book, and transfer book, and certificate book. There is nothing that would show anything that I know of in the way of details of business.

Mr. DUNSTAN: We would like to have those sent on also.

The MASTER: I should like the transfer book and the stock ledger with the others.

The MASTER: He stated that the books showed all the accounts except Stevens, Talbot, Baker, Judge Stone, Stone and Gray, Perkins, and Mr. Ostrander.

The WITNESS: I don't say that is all there is; that is all I remember.

Q. You know of these?

A. Yes.

Q. I understood they were all attorneys except Stevens?

A. Stevens is an attorney.

Judge STONE: You mentioned Thos. H. Perkins. Is he an attorney?

A. No, sir; he is the president of the company.

Q. Perkins and yourself are the only ones not attorneys?

383 A. Yes, sir.

Q. Is Perkins' for services?

A. Yes, sir.

Q. What services?

A. He has been president of the company and been taking a great deal of time in this matter, this law business, and we have had his advice and counsel and assistance that way.

Mr. DUNSTAN:

Q. Has he made any claim for services?

A. He said he should make one.

Q. Did he say how much?

A. No, sir.

Q. Have you made any claim for services?

A. I have not.

Q. How much is your bill?

A. I haven't made it out.

Q. How much do you think it will be per annum?

A. I haven't made up my mind, precisely.

Q. How much do you think your services are worth per annum for the last six years?

A. I wouldn't go through it again for a good deal of money.

Q. I mean your services as secretary and treasurer, aside from your interest as a party defendant in this litigation.

A. I don't think I should want to name any sum now.

Q. You are not prepared to name any sum at the present time?

A. No.

Q. I take it you have not reached any conclusion as to how much your services are made?

A. There were certain matters I was going to counsel with the judge here about before I went home.

Q. You paid the judgment against the Pewabic with money borrowed from the Franklin; that, I believe, you stated already?

A. Yes.

384 Q. Do you know when the debts were contracted on which those judgments were based?

A. They were our usual course of business at the lake.

Q. Do you know when the debts were contracted?

A. I should say within 3 or 4 months previous to the time; I should say so. Vivian is capable of answering that; I am not. Sometimes he pays a man right off prompt and sometimes lets them go 60 or 90 days, as all mines do. I wouldn't be able to answer that question.

Q. According to the best of your judgment it was three or four months before the entry of the judgments?

A. I should think so; but I wish you to understand that I don't know anything about those accounts.

Q. Those debts were contracted at the mine end and not at the Boston office?

A. Yes, sir.

The MASTER: Did I understand the judgment to be $25,852? Is that correct?

The WITNESS: My opinion is that the debt was somewhere from twenty-four to twenty-six thousand dollars, as near as I can remember. I know there were drafts drawn on me for about that amount and I had no money and let them go back.

Further taking of testimony adjourned until Wednesday, the 6th day of August, at 2 p. m., at Stone and Gray's office, in Houghton, Michigan.

385 WEDNESDAY, *August 6th*, 1890.

Met pursuant to adjournment and adjourned until Friday, August 8th, at same time and place.

FRIDAY, *August 8th*, 1890—two o'clock p. m.

Further taking of testimony continued before the special master, in the office of Stone and Gray, Houghton, Michigan.

The papers purporting to be a synopsis of the contents of the mine books of the Pewabic Mining Company were filed by the defendant in pursuance of the order of the master and the understanding at the last meeting.

ARNO JAEHNIG, recalled on the part of the complainants, testified as follows:

Direct examination by Mr. DUNSTAN:

Q. What papers are these I now hand you?

A. These are statements of disbursements and receipts from April 1st, 1883, to June 30th, 1890, taken from the Pewabic books.

Q. What other statement is that that you have besides the one you just mentioned?

A. This statement here of the disposal of the supplies on hand, closing up the supply account, mine wood, mill wood, stumpage account; that is all.

Q. By whom were these statements made?

A. I made them, sir.

Q. At the suggestion made here at the last meeting?

A. Yes, sir.

Q. Made by the master as well as myself and counsel on the other side?

A. Yes, sir.

386 Q. Are these statements correct from the books of the Pewabic?

A. To the best of my knowledge and belief.

Q. You endeavored to make them correct?

A. Yes.

Q. And do they contain a full synopsis of the books of the Pewabic?

A. Yes, sir.

Q. From April 1st, 1883, down to *to* June 30th, 1890?

A. Yes, sir.

Q. Can you tell the total amount of the disbursements from these papers of the Pewabic since the first day of January, 1884, down to the 30th of June last?

A. Yes; I can by deducting the 1883. From January 1st, 1884?

Q. Yes; to the 30th of June, 1890.

A. $175,748.11.

Q. What have been the receipts during the same period from all sources?

A. $75,881.39.

Q. Does that statement and amount include the receipts from all sources during that period?

A. It does.

Q. And the amount that you stated as disbursements during that period included the disbursements of all kinds and nature at this end of the concern during that period?

A. Yes, sir.

Q. Where is the inventory of 1883 and 1884?

A. 1883 is in that cost sheet.

Q. In this Supreme Court record?

A. If the whole record is in there it is in there. 1884 is here in the cost sheet.

Q. Among the files?

A. Yes, sir.

Q. Now, will you produce the inventory of 1884, please?

(Inventory of 1884 produced by witness.)

Q. Does the book that you now hand me contain the inventory of the personal property of the Pewabic for the year 1884?

387 A. The personal property against supply account.

Q. Against the supply account?

A. Yes; mine wood, mill wood, and so on.

Q. For 1884?

A. Yes, sir.

Mr. DUNSTAN: We offer this in evidence—the inventory of 1884, contained in the book entitled Cost Sheets 1884, Pewabic Mine.

Q. Where is the inventory of other personal property of 1884—supplies and such things?

A. There is none. There was a copy of that sent East.

Q. A copy of this was sent East?

A. Yes.

Q. The same as this?

A. Yes.

Q. Does this contain an inventory of all the supplies on the Pewabic of 1884?

A. Yes, sir.

Q. Have you the inventory of 1885? Was any taken?
A. I believe there is an inventory among some of the papers of 1885.
Q. Have you endeavored to find it?
A. I have looked for it, but it may be in the old vault.
Q. Is there an inventory of 1886?
A. Not that I know of.
Q. Was any taken in 1887, 1888, 1889, and 1890?
A. This is 1888 (handing a book to Mr. Dunstan).
Q. The inventory of 1888 is contained on what pages of the book I now hand you?
A. On pages 299, 300, and 301.
Judge STONE: Of what book—what do you call that?
A. That is the letter book—"Draft Advice Book" we call it.

Mr. DUNSTAN: We offer in evidence this inventory of 1888.

Q. You say that the inventory of 1885 you think is among
388 the papers in the office?
A. I think there is one there; yes, sir.
Q. Will you produce it and file it with the master?
A. Yes, sir.
Q. What has become of the property mentioned in the inventory of 1884?
Judge STONE: 1883 and 1884, do you mean?
Q. 1884.
A. It has been used and sold.
Q. Used by whom?
A. By the company.
Q. By the Pewabic?
A. Yes, sir.
Q. And sold for the account of the Pewabic?
A. Yes, sir.
Q. How much has been used?
A. During 1884?
Q. Of the inventory of 1884—of the property mentioned in the inventory of 1884?
A. I have here, supplies used, $6,916.81.
Q. That was used that year?
A. Yes, sir; for 1884.
Judge STONE: I suppose some was used afterwards. Some was used in subsequent years, was it not?
A. Yes.

Mr. DUNSTAN:

Q. Of the property mentioned in the inventory of 1884 how much has been realized from the sale of it down to June 30th, 1890?
A. The total supplies used and sold here is $31,698.86 from April 3rd, 1883.
Q. Down to what time?
A. Down to June 30th, 1890. That doesn't include all, though.

The total sold and used is $98,457.13—that is, I am taking this only from supply account; supply account was closed in 1886.

Judge STONE:

Q. Now, that I understand you to include all that was used and sold from April 4th, 1883, to June 30th, 1890?

389 A. To April 1st, 1886, down to the time the supply account was closed.

Mr. DUNSTAN:

Q. It was closed from supply account into expense account, was it?

A. Yes; a small balance. A balance of $342.28 was charged to expense.

Q. How much was charged up to expense account April 1st, 1886?

A. $342.28.

Q. So, then, the supply account ended January 1st, 1886?

Judge STONE: No; April, wasn't it?

The WITNESS: January 1st, 1887.

Q. 1887? The statement says January 1st, 1886.

A. It was virtually closed. There was a few entries there after 1886.

Judge STONE: It was virtually closed at what date?

A. The last entry was made in February, 1887. Here it is now. I condensed them all.

Judge STONE:

Q. You have them all there, haven't you, in the account?

A. I have all the figures; yes.

Q. There is nothing there to change your figures, is there?

A. Well, I balanced it in that way. It run up to February 2nd, 1887, but the total amount is just the same.

Q. There are a few entries, you say, after that?

A. Yes. I balanced it January 1st, 1886. The total amount is as given before—$98,457.13.

Mr. DUNSTAN:

Q. Have supplies been bought by the Pewabic manage-

390 ment since June 30th, 1884?

A. Yes, sir.

Q. What kind of supplies?

A. All kinds; oil, fittings, and so on; whatever was necessary; wood.

Q. For use on what machines?

A. On Pewabic engines.

Q. The engines running the man-engine, compressor, and pump?

A. We did some mining work in 1884.

Q. From June 30th down—I mean from June 30th, 1884. Well, when there was no mining work, then it was used on the machinery—on those machines I have just mentioned?

A. I suppose so.

Q. Can you tell the amount of such purchases from your statements and books?

A. I cannot tell them from June, 1884, without going through this whole work again. You wanted this annually and I made it annually. Now, if you want it from a certain time I will have to go all through the statements again.

Q. Is an answer to my question contained in these statements that you made?

A. Yes, sir; by picking them out.

Q. Can they be ascertained from the statements by examination?

A. Yes, sir; they can.

Q. Now, during the years 1885, 1886, 1887, 1888, 1889, and 1890 can you state the amount of wood that has been charged up to the operation of the compressor, man-engine, and pump? I will modify the question by requesting a statement from the time the mine suspended operations down to the present time.

A. That is from June, 1884, is it?

Judge STONE: Mr. Dunstan assumes it to be June 30th, 1884. Is that the correct time you shut down?

A. There was a little work done in July.

Mr. DUNSTAN:

391 Q. Now can you answer the question?

A. Those statements are made for each year and the summary is made for a year, and when you break into the middle of a year I have to go over the record again.

(Witness here examines books and statements to ascertain the amount in order to answer the last question.)

It is here conceded by counsel for the respective parties that the following judgments were entered in the circuit court for the county of Houghton against the Pewabic Mining Company—that is to say: One in which James H. Seager was plaintiff and The Pewabic Mining Company defendant, on which, on September 1st, 1884, a judgment was entered for the plaintiff for $12,475.33 and costs, taxed at thirty dollars, making a total of $12,495.33. Another judgment, in which Andrew Johnson was plaintiff *vs.* The Pewabic Mining Company, defendant, in which a judgment was entered on the 26th day of November, 1884, for the plaintiff for $1,818.26 and costs, taxed at $20.85; total, $1,839.11. A further judgment was entered in the suit of Carlos D. Sheldon and George C. Shelden, executors, *vs.* The Pewabic Mining Company, Nov. 26th, 1884, for the plaintiffs in the sum of $839.76 and costs, taxed at $21, making a total of $860.76. To satisfy these judgments certain real estate of the Pewabic Mining Company was sold on execution and bid in by Mr. Dunstan. In 1885, August 7th, this property was redeemed from the execution sale and the sum of $16,481.70 was paid Mr. Dunstan by the Pewabic Mining Company to redeem that property from such execution sale.

The records show a further judgment in the circuit court for the county of Houghton, in which Simon Dessau was plaintiff
392 and The Pewabic Mining Company defendant, in which, on May 21st, 1885, a judgment was entered for the plaintiff for

$624.87, damages, and costs of suit, taxed at $21.05, making a total of $645.92. That judgment was also satisfied by payment after judgment. There seems to have been also another suit, in which The Quincy Mining Company was plaintiff and The Pewabic Mining Company defendant, began the 6th of December, 1884. The claim was paid before judgment and the suit discontinued; never went to judgment. The amount was ——. (This amount is to be ascertained and put in at this point.)

The MASTER: Those are all the circuit court judgments?

Judge STONE: These are all the circuit court judgments we have been able to find, and I presume are all.

The witness, in answer to Mr. Dunstan's previous question, answers as follows:

A. The total amount of wood burnt to July 1st is 5,464½ cords—that is, from January 1st, 1884, to June 30th, 1884—and that leaves 738 cords burnt for the balance of the year.

Mr. DUNSTAN:

Q. And your statements that you filed to-day will show the amount of wood subsequent to 1884, will they not?

Judge STONE: That is, 1885, 1886, 1887, 1888, 1889, and 1890, will they?

A. Yes, sir; each year will show for itself.

Mr. DUNSTAN:

Q. How much wood was consumed by the Pewabic boilers since the mine stopped, in 1884, exclusive of the amount charged to the Pewabic? Can you tell to-day by your statements and books?

A. Well, I don't understand that question.

393 Q. How much wood was consumed by the Pewabic boilers since the mine stopped, in 1884, exclusive of the amount charged to the Pewabic?

A. That would take quite a little figuring again. I have got it here from July 1st, 1886. You see I have got it from the time that the Pewabic didn't have any wood of their own.

Judge STONE: Well, take your time and make your figures.

Mr. DUNSTAN:

Q. Is this a correct statement that you hold from July 1st, 1886?

A. Yes, sir; a correct statement from July 1st, 1886.

Mr. DUNSTAN: Then we will offer that in evidence and mark it Exhibit I so as to identify it.

Q. You stated at the time of your last examination that you would produce your supply book to-day. Have you got it with you?

A. Yes, sir.

(Supply book produced.)

Q. Is this the supply book?
A. That is the supply ledger.
Q. Covering what period?
A. I believe it commences in 1883.
Q. Down to the present time?
A. No, sir.
Q. Until what time—from what time to what time?
A. It is to 1886.
Q. From when?
A. From January, 1883.

Mr. DUNSTAN: We offer that in evidence also.

Q. Do you know the amount of the taxes for last year that were unpaid?
A. I forgot to bring them. I thought of them yesterday and intended to put the bills with the balance of the papers. I can bring them to-morrow.

394 Q. Does this account that you have presented to the court to-day, containing a statement of receipts and disbursements, show the amount of the indebtedness from the Pewabic to parties in this section of the country?
A. Yes, sir; there is a statement at the end of that trial balance that will show.
Q. Will you just state, please, the amount of the indebtedness of the Pewabic at this end of the concern?
A. The National Bank of Houghton, $208.78; the Franklin Mining Company, $1,745.71; Centennial Mining Company, $3.34; James H. Seager, $1.95; Quincy Mining Co., $3.50; poll-tax account, $1.00; James Howard and Son, $90.69; William Harry, ninety cents; J. Hodges, $10.30. That is all.
The MASTER: What is the total?
A. $2,066.17.
Judge STONE: What is the first entry there?
A. D. L. Demmon, treasurer.
Q. What is that amount?
A. That is a credit, $1,493,989.04.
Q. How does that come?
A. It was always an open balance on our books.
Mr. DUNSTAN: That is back from 1874 to the present time?
A. Yes, sir.
Judge STONE: And his account is always an open one on your book is the reason that — appears in that way?
A. Yes, sir.

Mr. DUNSTAN:

Q. What evidence of indebtedness have those parties against the Pewabic—notes or any similar evidence?
A. No; they have none, only the account on the books.
Q. What is the nature of the account in favor of the National Bank of Houghton; what is it for?
A. Checks drawn on them.

Q. By whom?
A. By the agent.
395 Q. When?
A. At different times.
Q. Running back how far?
A. Running back as long as the mine has been running. That is the balance at the present time.
The MASTER: Has the bank paid these checks?
A. Yes.
The MASTER: Stands as an overdrawn account?
A. Yes.

Mr. DUNSTAN:

Q. Now, the next account you mention is that of the Franklin, $1,745.71?
A. Yes, sir.
Q. Has the Franklin any note or other evidence of the indebtedness?
A. Nothing but a monthly statement that we make every month and file on the Pewabic books.
Q. And what is the nature of this indebtedness?
—. It is for supplies and wood, sometimes a little miscellaneous labor, and salaries.
Q. Does it represent also monies borrowed from the Franklin for the purpose of paying labor and supplies on the Pewabic?
A. I guess that balance includes draft sent to the treasurer from the Franklin charged to the Pewabic.
Q. Now, the Centennial has an item of $3.34. What is that?
A. That is an old balance. I don't know what it is for. It has been on our books a good many years. So has the balance of J. H. Seager and Quincy Mining Co. That dollar poll tax was collected from a man working at the mine.
Q. Now, you stated the James Howard and Son account was $90.69?
A. Yes, sir.
Q. What is the nature of that account?
A. For labor.
Q. Where does Howard and Son live?
A. At the Pewabic mine.
Q. Still living there?
A. Yes.
396 Q. And how far back does that labor account run?
A. That is for one month.
Q. How far back does it go—what year?
A. I don't just remember how many years they have been working there; a good many years.
The MASTER: When did this accrue?
A. It is only for one month.
Q. What month?
A. That is for June month, 1890.
Q. William Harry account of ninety cents is for what?

A. That is another old account that has been standing on our books.

Q. What is J. Hodges' account for, $10.30?

A. That is a collection I made for him, and he owes that to the Pewabic for ground rent.

Q. He owes to the Pewabic that amount?

A. Yes; for ground rent. It has not been transferred.

Q. Do you know what mining supplies are now on hand?

A. No; I do not.

Q. You have no statement in your books that will contain a list of the mining supplies at the present time?

A. No; we have not.

Q. Do you know whether or not there are any on hand?

A. There is nothing that we call supplies. The supply account is closed, and all the supplies they handle now is what they buy—what they use.

Q. There is, then, no supplies on hand—what is denominated "supplies on hand"?

A. No, sir.

Q. Have they any personal property on hand that you know of?

A. None that I know of.

Q. Has it been the practice of the Pewabic to send copies of annual inventories to the Boston office?

A. It has, while they were working, while the mine was in operation.

Q. Do you know whether or not they have sent copies or inventories taken since?

397 A. I don't know of any, except that one—1888—there.

Q. A copy of that was sent?

A. Yes.

Q. Now, is there any contract of record between the Franklin and Pewabic with reference to the use of the man-engine, pump, and compressor?

A. I don't know of any.

Q. What has been the practice with reference to charging up the wood supply and other expenses of running those three machines between the Franklin and the Pewabic?

A. We have been charging the Pewabic about four cords a day, 120 cords a month, for pumping. The balance of the wood that we had to the Pewabic was charged to the Franklin for man-engine and compressor.

Q. Was that about one-third of the wood consumed?

A. No.

Q. What proportion of the wood consumed was charged to the pumping?

A. I couldn't say exactly. It would vary; some months 350 and sometimes 400.

Q. Was there any direction given to you with reference to the proportion to charge the Pewabic of the wood supply?

A. Yes; we figured it over with Mr. Moore when he was ma

chinist there, and he thought about four cords a day would be the proper amount.

Q. Did Captain Vivian give you any direction with regard to the proportion to charge to the pump?

A. No, sir.

Q. Does your statement show the amount per month that was charged to the running of the pump, not only the wood charged, but also engineers' and other expenses? Do your statements show that?

A. Yes, sir; certainly.

Q. The statements, I mean, that you have filed here.

A. Yes; it shows the total amount for the year.

Q. Now, have you any statement here showing the drafts that have been drawn by you or by your predecessor on the Boston office since the closing down of mining operations?

A. There is a copy in the advice book.

398 Q. That is one of the books that has been filed here with the master?

A. Yes, sir; this is the book (indicating). There is also a record of them on the journal.

Q. Did you have any conversation with Captain Vivian or Captain Vivian with you with reference to the amount of wood to be charged for running the pump?

A. No; Captain Vivian told me to fix up with Mr. Moore—get his judgment on what was about right and proper to charge for pumping.

Q. Is that all that he ever said to you?

A. That is all I remember.

Q. How about the charges of the engineers and repairs? What proportion did you charge to the pump for keeping out the water?

A. The two engineers is all that has been charged up to that for the last year or two, and before Mr. Moore left he had a credit of ten dollars a month, but it was charged to him for rent.

Q. To whom?

A. Mr. Moore. He occupied a Pewabic house.

Q. My question is, How much of the expenses of the engineers was charged to pumping out the water since the mine stopped down to the 30th of June, 1890? You understand the question, do you?

A. Well, there is two engineers for the last two or three years; that is all about $45 a month.

Judge STONE: And you say the whole of their services has been charged up?

A. Yes, sir.

Mr. DUNSTAN:

Q. Charged up to the Pewabic?

A. Yes, sir.

399 Q. How about the repairs to the engine? Any repairs made to the boilers or to the engine?

A. There has been some little repairs made and some repairs made to boilers and engine and charged to Franklin.

Q. Do you know what proportion of those repairs have been charged to the Franklin and what proportion to the Pewabic?

A. No; I don't. I have a little statement here of what Franklin has paid for boiler repairs on the Pewabic.

Q. Have you any statement of the amount paid by the Pewabic for such repairs?

A. No.

Q. Do the books on file here and also the statements show the amount of such repairs?

A. They show all that ever was turned in for repairs or labor or anything of that kind, of course.

Q. There is, then, no written contract on file between the Pewabic and Franklin with regard to the proportion of repairs and expenses that shall be born- by either?

A. None that I know of.

Q. Well, now, were there any men employed and charged to the Franklin in connection with the running of the engine?

A. The compressor men running the air compressor was charged to the Franklin.

Judge STONE: Boilers, keeping boilers up, firing, and such things?

A. The engineers do the firing.

Mr. DUNSTAN:

Q. So there are no other charges, then, excepting what you have indicated?

A. No other charges excepting the engineers.

Cross-examination by Judge STONE:

Q. The statement which you read from a few moments ago with reference to the indebtedness of the Pewabic to divers parties does not cover any indebtedness for services of Captain Vivian as manager or receiver of the Pewabic Mining Company since the close of the work, does it?

400

A. It does not.

Q. Nor for his services since April 4th, 1883?

A. No, sir.

Q. There is such an account, is there?

A. Yes, sir.

Q. How has that account been treated? Has it been paid from time to time out of the monies received from rents and other sources?

A. Yes, sir.

Q. So that while the account has been paid in that way there is still such an account, I suppose?

A. Yes, sir.

Q. You will be able to produce to me such an account to file with the master?

A. Yes, sir.

Judge STONE: I say here, Mr. Dunstan, and to the master, that I think it is prudent and proper for Captain Vivian, since he has been in charge of this property, placed there by Judge Withey, and

has had the care of it, and even for the years in which the mine was operated after April 4th, 1883, that he should present an account for it. In one sense the account has been paid, but he has paid it from receipts. It may be said he had no business to pay himself; therefore we shall present the account.

Q. Is there also an account in your own name as clerk for keeping the books during these years?

A. There is.

Q. It is upon the books, but it has been paid in the same way?

A. Yes.

Q. These credits to Captain Vivian, have they been entered up on the books, too?

A. Yes, sir.

Judge STONE: But, in one view of the case, it may be proper and prudent to file them, and we shall do so within the time referred to by your notice.

Q. What amount have you charged since the mine shut down to the Pewabic?

A. For services?

Q. Yes.

401 A. Well, Joseph Vivian was clerk there before.

Q. But I ask about yourself.

A. Ten dollars a month.

Q. $10 a month you have charged?

A. Yes.

Q. There has been some extra work charged at times, has there?

A. Yes.

Q. I understand that out of rents which have been collected and other funds that have come in you have been paid and it has been accounted for to the Boston office?

A. Yes, sir.

Q. Also since the 4th of April, 1883, young Mr. Vivian was clerk there for a time?

A. Yes.

Q. He was paid, I suppose?

A. Yes, sir.

Q. But still the account is there?

A. Yes; the account is there on the books.

Q. Is the same true of the engineers?

A. Yes.

Q. Their charges?

A. Yes.

Q. I think you had better present me an account of that. As I understand it, they also have been paid, with the exception of one month to Howard and Son?

A. Yes, sir; that has been paid since.

Q. So that you really were correct when you said that, so far as claims appear that have not been paid, the statement that you gave covers it?

A. Yes, sir.

Q. You stated in the opening of your direct examination the amount of indebtedness from January 1st, 1884, to June 30th, 1890, at a given sum. When did you go there as clerk?

A. In August, 1887.

Q. The mine had ceased operations when you went there, then?

A. Yes.

Q. Some portion of this money, I suppose, has been disbursed since you went there?

A. It has.

Q. Will you state in a general way to the master the manner in which money has been disbursed since you have been there—in a general way?

402 A. Disbursed for wood, labor, and some supplies.

Q. Anything for taxes?

A. Some taxes and a little insurance.

Q. Has there been other insurance paid?

A. Yes.

Q. There has been insurance paid by the Franklin?

A. There has been insurance paid for the last three years by the Franklin.

Q. Has that entered into the Pewabic account?

A. No, sir; insured for the benefit of the Pewabic.

Q. It constitutes, then, as I understand, a portion of this indebtedness of $1,700?

A. No, sir; no charge was made to the Pewabic; the engine-house, man-engine house, and some others there were insured for the benefit of the Pewabic and no charges made for it. The Franklin paid the premiums.

Q. You have now covered them, the principal sources of disbursements?

A. Yes.

Q. Some amounts have been paid attorneys; some attorneys have been paid as a part of these disbursements?

A. Yes, sir.

Q. And those all appear in your account?

A. Yes; the statements show what it is.

Q. Am I to understand, then, in a general way, that these disbursements have been made by Captain Vivian there since you were there for the care and preservation of the property?

A. Yes.

Q. Something has been paid to the engineers, you say, and a certain amount of wood has been expended to run the machinery to do the pumping?

A. Yes.

Q. Now, I understand that you have charged to the Pewabic only such portion of that as you thought was just and fair for the Pewabic to pay by virtue of and on account of the pumping done?

A. Just the figures that the machinist gave me.

403 Q. You took the judgment of the machinist, did you, under the direction of Captain Vivian, for that?

A. Yes.

Q. Was the machinist, James Moore, the same James Moore that testified here in this suit the other day?

A. Yes, sir.

Q. Now, as book-keeper and being familiar with these books, are you able to state in a general way what those disbursements were for prior to the time you went there and after, we will say—oh, after the same time you named—January 1st, 1884? Are you able to state from the condition of the books whether any general mining was carried on there during that time?

A. Certainly; I can tell by the books there was none carried on after July, 1884.

Q. But there was from January -st to July, 1884?

A. Yes.

Q. What were the character of those disbursements? State whether they were such as are usual in mines that are operated or not.

A. They were.

Q. Now, those statements appear fully in the synopsis you have filed here?

A. Yes, sir; they appear for the whole business.

Q. And for the year 1883, I suppose, they appear also?

A. Yes, sir.

Q. The amount paid for the mine-work—for stopping, draifting, sinking, and all that?

A. Yes, sir.

Q. Those, then, were the ordinary work and expenses of a mine that was being operated?

A. Yes, sir.

Judge STONE: You asked him to produce and file the inventory of 1885?

Mr. DUNSTAN: Yes.

Judge STONE: And he did it?

Mr. DUNSTAN: No; he has not done so. He thinks he has that at home and will produce it.

Mr. DUNSTAN: I wish you to file a statement of the wood consumed by the Pewabic boilers since the mine stopped, in 1884, exclusive of the amount charged to the Pewabic, down to July
404 1st, 1890, that will include this statement that you have filed now, marked Exhibit "I," and the years previous.

Judge STONE:

Q. Are you able to state how many days the mine was in operation in the month of July, 1884?

A. I can only state from the contract book here that it was ten days' work on contract of stopeing.

Q. Then some portion of that wood included in that month should not have been embraced, should it, in the amount that has been expended since the mine closed down?

A. No; that should have been included in this.

Q. That is, it should have been included in the previous months of that year?

A. Yes.

Q. But you are unable to arrive at the exact amount?

A. That is the exact amount.

Q. But you cannot tell how much of that was consumed while the mine was running and what afterwards?

A. No.

Q. But at least one-third of the month the mine must have been running?

A. Yes.

Q. Because you have ten days charged, you say, upon your books?

A. Yes.

Q. The remainder of that statement is contained, is it not, in your statement filed here—the synopsis filed here?

A. Yes.

Q. That portion, then, of the statement must be largely estimate, must it not; you cannot arrive at it?

A. I cannot arrive at it.

Q. And all you can do is approximate it?

A. Yes, sir.

Q. Because it necessitates the dividing up of that month, and that you cannot do, you say, from any basis here?

A. Yes, sir.

Q. I think you have already stated that, in your judgment, this synopsis is accurate?

A. Yes.

Q. As taken from the books?

A. Yes.

Q. Of the Pewabic?

A. Yes, sir.

Q. And they show the total expenditures and receipts dur-
405 ing the period covered?

A. They do.

Q. Embracing the different branches of the business?

A. Yes, sir.

Redirect examination by Mr. DUNSTAN:

Q. Captain Vivian's services as manager of the Pewabic since the mine closed have been paid, have they not?

A. Yes, sir.

Q. And the amounts paid to him *to him* per month appear upon the books and in your statements?

A. They do.

Q. Has he made any other charge against the Pewabic that you know of?

A. There is a few items of expenses to Grand Rapids and Detroit and other places.

Q. Those appear upon the books, do they not?

A. They appear in a lump sum there and attorney fees and other charges. There is a bill on file for them.

Q. The clerk's services—that is, Joseph Vivian's services—have been paid, too?
A. Yes.
Q. And the books show the amount per month?
A. They do.
Q. And also your statement?
A. Yes.

Judge STONE: His statement will show the amount per year.

Q. Is this also true of the engineer's charge?
A. Yes.
Q. Now, you state that the insurance on the engine and compressor have been paid by the Franklin?
A. The engine-house and compressor-house and some other. I don't remember the items exactly. The premiums are $400.
Q. The premiums of $400 one year cover what property?
A. I don't know it all. Man-engine house, and compressor-house, and hoisting-engine house, and some on the engine.
Q. Boiler-house, too?
A. Yes; I believe so.
Q. That has been paid by the Franklin, I understand?
A. Yes.
Q. No charge made against the Pewabic?
A. No charge made.

406 Judge STONE:

Q. Let him, in that connection, state the amount for 1887, 1888, and 1889.
A. There has $1,300 been paid in premiums by the Franklin for the Pewabic.
Q. How much has been paid for other purposes, and what, by the Franklin? Just itemize them.
A. $510.23 for boiler repairs; repairing man-engine and pump shaft, $400; man-engine repairs, timbers, castings, and man overseeing man-engine and other labor, $2,360.50.
Q. Those have been paid by the Franklin and have not been charged to the Pewabic?
A. Have not been charged to the Pewabic.

Mr. DUNSTAN:

Q. When were those charges made?
A. At different times.
Q. Does this statement that you have contain dates as well as amounts of such items?
A. No, sir; no dates.
Q. What books show the account that you have just read off?
A. Well, the Franklin books would show some of it and the mining captain's time book will show the man that has been overseeing the man-engine.

Q. There is no charge of the kind made against the Pewabic, as I understand, for those repairs?

A. No, sir.

The MASTER:

Q. Did I understand that this account of James Howard and Son, $90.69, has been paid?

A. Yes, sir.

Q. You do not owe it to them now?

A. No, sir; it appears on the book.

Judge STONE: It has been paid since June 30th.

The MASTER:

407 Q. First National Bank of Houghton. You do owe them?

A. Yes.

Q. This Franklin Mining Company, what was the amount of that indebtedness?

A. $1,745.41.

Q. No part of these charges that you have been reading here are in that?

A. No, sir.

Q. The Centennial was a very small amount, wasn't it?

Mr. DUNSTAN: Yes; it is contained in these statements; it is on the last page.

The MASTER:

Q. This Howard, what does he do now?

A. He is the engineer.

CHARLES E. BAILEY, recalled, testified as follows:

Direct examination by Mr. DUNSTAN:

Q. Do you know of any deposit of waste rock on the Pewabic by the Franklin?

A. The Franklin has been dumping across the Pewabic line, running the bridge across the section line, a driveway being under the bridge, and dumping rock onto the Pawabic property.

Q. How long have they been doing that?

A. For quite a number of months, something like a year, perhaps longer, but I think not.

Q. Now, can you state as to the quantity of rock that has been dumped on the Pewabic by the Franklin?

A. A rough estimate would be about 12,000 cubic yards.

Q. How much ground is covered by this waste rock?

A. About 17,000 square feet; somewheres less than half an acre.

Q. Is it on any part of the Pewabic that would be used
408 for mining purposes, if the property should be used for mining purposes?

A. It might be in the way for certain purposes; it is not used at present. It is in a place that might be desired for something.

Q. If the mine was in operation, I mean, would the space be of benefit to the Pewabic as now covered by this debris or rock?

A. It might be. It has not so far been used for any specific purpose.

Q. Can you estimate the number of tons of this rock?

A. Well, about 100 pounds to the cubic foot.

Q. And you have stated the number of cubic feet, have you?

A. Yes, sir; 12,000 cubic yards is an approximate estimate.

Cross-examination by Judge STONE:

Q. How much of that is on the right of way of that tram-road? The Franklin have got a right of way there.

A. I have not seen any record of the right of way. I don't know what the width of the right of way is.

Q. You are not aware of any right of way and have not taken that into account at all?

A. No, sir.

Captain JOHNSON VIVIAN, recalled on behalf of the defendants, testified as follows:

Direct examination by Judge STONE:

Q. Who has had charge of the Pewabic Mining Company's property since the filing of the bill of complaint in the cause?

409 A. I have.

Q. Under what arrangement have you remained in possession—under what direction of the court or Judge Withey?

A. No direction whatever from any one.

Q. No written directions?

A. No written or no verbal.

Q. What were the circumstances under which you remained in possession?

A. When an application was made for a receiver Judge Withey said he thought the property was in proper hands and he should let it remain.

Q. Since that time what have you done with reference to the property—the general course?

A. Everything that I thought was proper and right for the preservation of it and the interest of the parties interested, as I would for any mine that I had charge of.

Q. I notice that in one instance here you bid in some property of the Pewabic that was sold on execution.

A. Yes.

Q. For the sum of $335, as shown by the sheriff's statement.

A. Yes.

Q. What became of that property afterwards?

A. I resold it. I sold it to the Franklin for its full value.

Q. Do you remember what that value was?

A. I can tell you from this statement mighty quick; $1,187.18; the sheriffs I paid out of that $335, leaving $952.18 in favor of the Pewabic. (Should be $852.18, according to the figures.)

Q. Did the Pewabic get the benefit of that?

A. The Pewabic got the whole benefit of it.

Q. How much have you been charging per month for your services since the mine shut down—for caring for this property?

A. For the first six or seven months, under the advice of counsel, I charged $100 a month, and not seeing the duties were so much as I first expected I cut it down to $50 for awhile, expecting
410 to make it an average of $75 a month, but I notice I run over and it didn't come to that, but I continued that $75 a month, and it will be probably about—something less than that ever since.

Q. You have collected more or less rent, have you?

A. Yes, sir; large amounts, as shown by the books.

Q. Have you reimbursed yourself or paid for your services out of the receipts?

A. All up to June 30th, 1890.

Q. And that all appears in books?

A. All appears in the books; yes.

Q. It seems that you have sold and disposed of some supplies at or about the mine?

A. Yes.

Q. During these years?

A. Yes.

Q. Why did you do that, Captain?

A. For to take care of the property.

Q. You were left in charge of that property with or without a fund to do it with?

A. Largely in debt and returned protested drafts, which I took care of afterwards by selling property to meet them.

Q. What can you say as to whether it has been for the best interests of the property to sell and dispose of those supplies as you have?

A. A large amount of it would have gone to ruin if I hadn't done so.

Q. State whether any of the property has been sacrificed or whether you were able to get a reasonable price or value for it.

A. I got the best value I could for second-hand property—all it was worth, and in some instances even more than it would have brought in any market.

Q. Those transactions all appear on the books?

A. As far as I know, every penny.

Q. Something has been said here with reference to the amount of wood charged the Pewabic for the running of the pump. Now, what can you say about that manner of division?

A. Mr. Moore, our chief engineer, who is now chief engineer of the Quincy and testified here the other day to that, made the test, and on his test and judgment the charges were made.

411 Q. You thought it safer to rely upon his judgment than your own?

A. More so than I would my own. He had time to attend to it,

and he is an engineer, which I don't profess to be; and, not only that, he made the experiment to find out exactly what it did take.

Q. I think you were asked when on the stand before whether there was any written agreement between the Franklin and the Pewabic with reference to the use of the man-engine and the compressor, etc.

A. There never has been. We have been using the man-engine for the last sixteen years. There always has been a running account between the two companies, and, there being so many little things and being neighbors and under one management, we could not possibly make an agreement. A man would have hard work to make an agreement between himself. That has been one of my troubles, to decide correctly and impartially between the two parties.

Q. What are you able to say to-day as to whether the sums charged up to the Franklin for the use of that machinery has been a suitable sum—a just sum?

A. I think it has been ample and rather over than otherwise, all things taken into account.

Q. As to whether, in your judgment, has it been necessary to keep those pumps running for the preservation of the property of the Pewabic.

A. Of course it has, or I suppose so.

Q. That was your judgment?

A. Yes; my judgment, or else I wouldn't have done it and had to scrape for money, as I have to pay for it.

Q. From the 4th day of April, 1883, the time of the expiration of the charter of the Pewabic, down to some time in the month of July, 1884, will you state whether regular mining operations
412 were carried on at the Pewabic?

A. Yes; as regular as we know how from January, 1883.

Q. To July, 1884?

A. Yes; except the last month or six weeks, when we had to clean up and quit business. Then we only stoped a few fathoms where there was copper supposed to be in paying quantities; and, under advice of counsel, I had that taken out and the copper returned to meet all the expenses possible, which was for the benefit, as we considered, of the Pewabic Mining Company.

Q. You will state whether, during the time mining was carried on within the period I have mentioned, it was prudently and properly conducted.

A. The best I knew how.

Q. How many years' experience had you then had in that sort of business?

A. About forty (40).

Q. I notice in the account of 1883—the mining expenses of that year—that there is a large amount paid out here for stoping.

A. Yes, sir.

Q. Upwards of 2,374 fathoms, $30,450.47?

A. Yes.

Q. Was that necessary in carrying on that mining business?

A. We supposed so. Stoping is the most essential of anything, if it is only opened for to get the equivalent back.

Q. How about this drifting?

A. Drifting you couldn't do without by any means.

Q. And sinking?

A. Sinking in particular. Sinking, drifting, stoping, hoisting, selecting, and running to the mill and stamping were all essential to getting out the copper that was returned.

Q. Will you state whether that work was prudently and properly carried on during that time?

413 A. I had a pretty good mining captain at that time. The Quincy have got him now. It was under his charge.

Q. What do you believe about whether it was?

A. I am inclined to think it was. I examined it pretty often. I think our work was done as cheap and regular and as good as the average of Lake Superior.

Q. Whether as a result of all this work for that year and the next copper was produced.

A. 1883 and 1884 all the time, monthly product, which is shown in our statement—the total amount is.

Q. Is it true, then, that during 1883, after April 4th, and down to the time in July, 1884, when you ceased active work that these books and this synopsis show the cost of getting out the copper that was produced there then?

A. Decidedly so; every cent.

Q. What became of that copper—the product?

A. It was shipped to the treasurer.

Q. To Mr. Demmon, as the treasurer, in Boston?

A. Yes, sir.

Q. I notice that the disbursements and receipts do not balance.

A. I do not see how they should. We don't receive anything here at this end, you know.

Q. State whether the product of the mine is lacking to make this account balance.

A. Decidedly so; for we never get anything from the product of the mine here on our books. It is all kept East.

Q. I see here a summary of disbursements and receipts from April first to December 31st, 1883. It shows your receipts to have been but $25,283.13, while your disbursements were $184,304.96.

A. Yes.

414 Q. Now, as I understand you, the disbursements show the expenses of producing the copper?

A. Yes.

Q. While your receipts were quite an inconsiderable sum?.

A. I don't know what they were.

Q. What sources do you think they came from?

A. I don't know; the book will show.

Q. They, of course, don't show the results of any of the sales of the copper?

A. Not a cent. No return is made to us in shape of copper or

silver, and I believe that is the rule with all the mining in Lake Superior.

Q. Will the Boston books show the amount of copper produced?

A. They should.

Q. In addition to the getting out of this copper were there other expenses necessary in connection with the smelting of it?

A. The smelting and transportation was paid East. Our expenses ceased by delivering it to the smelting works, this end.

Q. From what source did you receive the amounts necessary to keep the mine in operation during this period already mentioned?

A. We drew on the treasurer for it; some time sight drafts and sometimes time drafts.

Q. Do you know with reference to these judgments generally? I don't expect you to show particularly; take, for instance, the judgment in the case of Seager against the company, the nature of that claim of Seager—what was it for?

A. Mine labor.

Q. How did that come?

A. Mostly collections from the men and some wood. He also assumed some debts.

Q. There were some debts that he assumed for the company?

A. Yes; I am not clear on all these little details. We will
415 furnish them. We will hunt them all up.

Q. It is only generally that I care for. This claim of Mr. Seager's, are you able to state this much, that it was a claim growing out of the mining operations of the Pewabic?

A. Yes, sir.

Q. Are you able to state whether it went back of April, 1883—some of it—or was all of it after April, 1883?

A. I don't know. He always had a running account.

Q. And I suppose the truth is that no point was made of the expiration of the charter, April 4th, 1883, but you continued work in the same way?

A. I didn't know of any expiration of any charter April 4th, 1883, and it seems nobody else did.

Q. So that mining business was carried on just the same after as before?

A. Yes, sir.

Q. Are you able to state what made up the statement of Andrew Johnson's account, $1,818.26; whether that was for wood or other supplies?

A. I think both.

Q. Wood and other supplies?

A. Yes, sir.

Q. And you cannot tell just when it was furnished?

A. No, sir.

Q. The Carlos Shelden and Geo. Shelden judgment, as executors, against the Pewabic Mining Company, what was that for?

A. Casting and machinery.

Q. Now, it has been admitted here that under these judgments certain property, real estate, of the Pewabic was sold.

A. I believe I testified to that.

Q. And bid in by Mr. Dunstan?

A. Yes, sir.

416 Q. And afterwards redeemed?

A. Yes.

Q. Do you know where the money came from that redeemed that property; whether it was a part of the loan made by the Franklin?

A. I am inclined to think so from the fact that the Pewabic was in debt at the time, and it had to be got from some place to pay it to save the property from being sold.

Q. It is true, as the records show, I believe, that this property was not redeemed until August, 1885, some time after this suit was pending and going on?

A. I think that was about the date, as well as I remember.

Q. Do you know yourself of any arrangement between counsel, Mr. Dickinson and Mr. Chandler, by which it was agreed that this property should be redeemed if the money could be borrowed to do it?

A. I have some recollection of that. There was something said between Mr. Chandler and Mr. Dickinson that it should be redeemed and kept in order if the money could be hired, and Mr. Dickinson, as I understand, was agreeable for the Pewabic to borrow it.

Judge STONE: I will examine Mr. Chandler in regard to that fact. Mr. Chandler says it was distinctly understood between him and counsel that it should be redeemed if the money could be borrowed.

Q. Aside from the money necessary to redeem this property, it seems there was a considerable larger sum borrowed from the Franklin. For instance, it took less than seventeen thousand dollars to redeem this property, but it seems along during a few months in 1885 thirty thousand dollars was borrowed. Do you know what it was used for?

A. That was to pay, you know, the shortage of the money they owed.

417 Q. Are we to understand, then, that it was to pay for some debts that had accrued in the operation of the mine?

A. Entirely so; nothing else that I am aware of.

Q. Did you ever hear any objection made to the operation of that mine by any stockholder down to the time of the commencement of this suit?

A. No.

Q. Whether the business was carried on with the consent of the entire management and stockholders, so far as you know.

A. I never heard any complaint at all.

Judge STONE: If we find any further judgments we will file them. You will have no objections to that—the statement of them.

Mr. DUNSTAN: Call my attention to them if you do.

Judge STONE: Of course we will, and ask to have them filed.

Judge STONE:

Q. Are you able to state whether the debts paid with this money

borrowed from the Franklin were debts that accrued after or before April 4th, 1883?

A. I don't know, because we were never very flush with money; we were generally in debt.

Q. Is it true that during the operation of the Pewabic, in its mining, that it was financially embarrassed?

A. Considerably so.

Q. And whether it did a profitable business during those last few years or not.

A. Not very profitable; not at all profitable, in fact.

Q. The price of copper was such that you were hardly able to make both ends meet, as we sometimes say?

A. We didn't do it.

Q. The taxes have been kept paid, with the exception of the last year, and the insurance?

418 A. Yes; the taxes, with the exception of the last year, and the insurance kept close.

Q. Whether you have been paying for insurance of the Pewabic out of the Franklin's funds.

A. Yes; several years.

Q. Without charging it up at all?

A. Yes.

Q. Has the Franklin received any benefit at all from that insurance other than the fact that it has been able to use its machinery there?

A. Occupying m-chinery and such; occupying the buildings and using machinery.

Q. Those policies run to the Pewabic, do they—or the Franklin?

A. They were made out to the Pewabic.

Q. A statement has been shown here by Mr. Jaehnig also with reference to paying for certain repairs to the machinery that the Franklin has been to the expense of without charging it up to the Pewabic.

A. Yes.

Q. The statement produced here shows that sum $4,578.73 — have been paid by the Franklin, that has not been charged to the Pewabic, on account of insurance, boiler repairs, repairing of the man-engine shaft and pump shaft, and some man-engine repairs, timber, castings, etc., and overseeing the man-engine and labor.

A. Yes; that is correct.

Judge STONE: We will offer his statement just referred to in evidence and mark it Exhibit "2."

Judge STONE: These statements we offer in evidence better be marked. We will mark them as Exhibits "3" and "4."

Q. I understand that the labor of the engineer has been charged up to the Pewabic Company.

A. It has.

Q. Has that been two shifts?

A. Two shifts, the whole time. We free the mine from water to a certain extent and take care of the property.

Q. Whether you deemed it necessary for the care of the property that there should be an engineer there all the while.

419 A. Yes.

Q. Notwithstanding the fact that the Franklin was using the man-engine, you still thought it important for the preservation of the property that the engineer should be there all the time?

A. Yes.

Q. Is that engine and compressor in the same building?

A. They are in separate buildings and no fire in them at all, but they are operated by the boilers under the same roof as the engine.

Q. And you cannot run the engine to do the pumping without at the same time doing the other work?

A. No, sir; the compressor boys were paid by the Franklin.

Q. Could the necessary pumping have been done, in your judgment, without keeping a man there all the while?

A. I wouldn't like to chance it, and then have the building burnt down. They would say it wasn't good judgment on my part.

Q. In other words, you couldn't keep another engineer there two hours in the day or two hours in the night?

A. No, sir. We have done a great many things for the Pewabic, the Franklin has already, but I couldn't do as much as that.

Cross-examination by Mr. DUNSTAN:

Q. Do the same engineers run the man-engine and the pump?

A. Yes; with the assistance of the compressor boys. The compressor boys were paid by the Franklin and assisted them in every particular—sometimes to fire, sometimes to run the man-engine and pass wood, and a thousand things; go and fetch oil and waste and other material; allowed them to help them in that way.

Q. Has any of the bottom water in the mine been pumped

420 out since the mine stopped?

A. Yes; we were several months taking it out, with a skip.

Q. Up to what time?

A. I don't know; the books show that. We can show the number of men employed.

Q. Up to about what time?

A. I couldn't tell you. I can render you a statement of that.

Q. Can't you give the year?

A. I suppose pretty nearly a year, because we expected this suit might end at any time; so we kept the water out.

Q. Then, after the first year, you permitted all the bottom water to remain in the mine?

A. Somewheres about there. I am not certain as to the time.

Q. Now, you say that James Moore was the man who made the test as to the quantity of wood required as to the pump?

A. Yes.

Q. Did he submit his judgment to you?

A. Yes; and to the clerk also.

Q. And, acting on his judgment, you claim you had it charged in that way?

A. Yes.

Q. Now, do you remember the proportion of wood that he stated would be required to run the pump and should be charged against the pump?

A. Yes.

Q. About how much?

A. 4 cords a day.

Q. When was it that he made this test and made this report to you?

A. I don't know.

Q. Was it shortly after the mine stopped?

A. I can't tell; I guess after we ceased pumping the bottom water; somewhere about that time.

Q. Are you sure it was after you ceased pumping the bottom water or before?

A. After.

Q. Are you sure about that?

A. I think so.

Q. You are positive, are you?

A. Well, no; I don't mean to say I would positively swear to that, because I don't know exactly the date.

Q. Then how did you fix the proportion of wood to be charged to the Pewabic before you stopped pumping the bottom water, if you had no test for it?

421 A. It was assumed what it would take.

Q. Who made the assumption?

A. I made it with Mr. Moore. He was there all the time; in the same way.

Q. And do you know how much you applied there or charged the Pewabic during the first year?

A. No, sir; the books show.

Q. And you don't know how much after that?

A. No; the books show.

Q. Now, in your judgment, was it necessary to keep the pump running to preserve the Pewabic mine?

A. No; not to preserve the Pewabic mine.

Q. To preserve what?

A. It would keep the water out.

Q. What would be the beneficial result of pumping the water out?

A. It is generally supposed that a mine that is going to work again would be better to be kept pumped.

Q. Without any suppositions as to its going to work again, whether would the pumping of the water out be a benefit to the mine?

A. I thought it was right to do it. I was left in charge. I suppose if I left it all in somebody else would find fault, and if I pumped it out somebody would find fault because I didn't leave it in.

Q. Is it because you were afraid somebody would find fault that you kept it pumped out?

A. Not in particular; it was because I thought it was right.

Q. You don't claim that the water in the mine would tend to injure the timber in the mine?

A. I don't think the water would injure it, by any means.

Q. Isn't it a fact that if the mine had been filled with water that the timbers would be preserved?

A. You couldn't fill the mine with water.

Q. Assuming it had no outlets, wouldn't the timber be better preserved in the mine if the mine was full of water?

A. That depends upon the quality and kind of the timber?

422 Q. We are speaking in regard to that timber. Wouldn't it be better preserved if the mine was kept full of water?

A. There is different opinions on that?

Q. As a mining man, I would like your opinion.

A. There is a difference in timber; some would stand down there and some wouldn't.

Q. With reference to that timber, what is your judgment?

A. We can tell better when the mine is pumped out how it looks.

Q. Do you say that you are not able to form an opinion and express it with reference to this matter?

A. I wouldn't want to under oath.

Q. Why not?

A. I might err in my judgment in that way.

Q. What effect would it have on the Pewabic if all the surface water was permitted to accumulate there, instead of being pumped out?

A. I don't know.

Q. Would it have any effect?

A. I think likely you would have some charges to be paid for pumping long before now.

Q. Would it have any effect on the property in the Pewabic mine?

A. I think likely.

Q. What?

A. It might have brought away some ground; tumbled the shafts together, where now they have been kept partially in repair.

Q. Well, then, in your judgment, that part of the mine submerged with water up to a point between the 25th and 26th levels is possibly in a dangerous condition, although it has been filled with water?

A. I shouldn't be surprised if it was and I think a good deal of it is.

Q. Now, if the surface water hadn't been pumped out the mine would have filled up to this hole between the 25th and 26th levels?

A. Yes; years ago.

Q. How many years ago?

A. I don't know.

Q. In your judgment.

A. Probably three.

Q. Then where would the water go after it reached that po-nt?

A. Go into the Franklin.

Q. I presume it is unnecessary to ask the question that the
423 pumping has been a benefit to the Franklin under the circumstances?

A. No, sir; the Pewabic would have to pay for it.

Q. But has it not been a benefit to the Franklin to have the water kept out of the Franklin by means of the pumping of the Pewabic?

A. I don't see how it would be a benefit to the Franklin. The Franklin had no right to do it; it is the Pewabic's duty.

Mr. DUNSTAN: That is a question of law.

Q. When were you last in the Pewabic mine?

A. Quite awhile ago.

Q. How many years ago?

A. The last I was down there with Captain Harris, I believe, when I was down so far, but I have been to the water about 5 or 6 months ago.

Q. When was the last time preceding this that you have just mentioned that you were in the mine?

A. I don't know how long. Captain Harris, have you got the date? You were underground then. I have the date in the office.

Q. About how long ago?

A. I don't know how long; 2 or 3 years, ain't it?

Q. You were down with Captain Harris, then, along about the latter part of 1885?

A. I was down when he was. I could tell the date home. I went with him.

Q. Those are the only two times you have been in the mine, then, since the mine stopped operations?

A. Oh, no; I have been in there several times since then, and my mining captain, the Franklin mining captain, and another man have been in the mine every day, one or the other, and report to me.

Q. Up to what time?

A. Up to the present time.

Q. Down as far as what level?

A. Down to the 18th or 19th, and very often to see the state of the mine. Captain Deannis, I order him to go down as far as the water line and report to me the state of the mine.

Q. Now, you know the judgments, of course, that have just been mentioned by Judge Stone against the Pewabic?

424 A. Yes; more or less.

Q. When did the debt accrue on which James H. Seager sued the Pewabic Company?

A. I don't know that; it has been a running account with him right along for years.

Q. Do you know how much of that account accrued since the 4th of April, 1883?

A. No; the books show, though.

Q. Do you know when the debt accrued on which the Sheldens, as executors, sued the Pewabic?

A. No, sir; they had a running account for years.

Judge STONE: They were running a foundry at that time?

A. Yes.

Mr. DUNSTAN:

Q. Do you know when the Johnson debt accrued?

A. I should rather think his was a late date. It is only a small amount.

Q. How is it with regard to the Quincy account; is that a late date?

A. How much was it?

Judge STONE: We were unable to state from the books. The suit was settled before judgment.

The WITNESS: I remember that was for diamonds; the books show it; I don't know just what it was for—yes; it was for carbons—some diamonds we got from them.

Q. What was the date of it?

A. May, 1884. The amount was $295 and some cents.

Q. Do you know when the debt accrued of Simon Dessau against the Pewabic?

A. It must have been somewhere about that time. I think we can tell here. (Books examined.) That accrued April, 1884.

The MASTER: This judgment of Seager's was also paid?

A. Yes, sir.

Q. Isn't there a debt still due to Seager?

A. Yes; a small amount—$1.90, I think.

Mr. DUNSTAN:

425 Q. Now, you spoke, Captain, of Mr. Dickinson's desiring the property redeemed from the judgments.

A. I understood that Mr. Dickinson agreed with Mr. Chandler on such a course to be pursued.

Q. Did you hear Mr. Dickinson say anything on the subject?

A. No.

Q. It was understood, I take it, by the conversation had this afternoon between you and Judge Stone, that $17,000 of the Franklin loan to the Pewabic was used for the purpose of paying off the three judgments in question—the Seager judgment, Shelden judgment, and Johnson judgment. Now, what became of the remaining $13,000?

A. On page 133 of the journal it would appear that Mr. Demmon paid drafts in favor of S. Dessau in July, 1885, for $530.04 and James H. Seager, account of execution sale, $13,520.73; on account of execution sale for Johnson and Shelden, executors, together, $2,910.97; and on page 135 of the journal it would appear that the treasurer paid drafts for the following amounts in August, 1885: For J. H. Seager, $1,124.28; M. M. Morlee, $57.45; Wm. Bingham and Co., $19.05; Atlantic Dynamite Co., $1,162.50; Judson Powder Co., $500; Portage Lake and River Improvement Co., tolls, $45.74;

S. Dessau, $96.33; Standard Oil Co., $232.53; Graham Pope, $149.36; James B. Sturgis, $450; Franklin Mining Co., $189.14; M. C. Bullock, $500; M. Van Orden, county treasurer, $662.83; W. P. Seager, t'w'p treasurer, $239.76.

Judge STONE:

Q. Were those two last items for taxes?

A. Yes; for taxes.

Q. State whether, from the character of these accounts, they were for mining expenses or expenses connected with the operation of the mine, we will say.

426 A. Yes, sir; every one of them. On page 136, under date of Sept., 1885, draft, Hanchett and Stark, $643.69. That was the advice of Mr. Demmon—to pay that for legal services. On page 159 there is a draft paid to Chandler, Grant and Gray, under date of Oct. 19, 1885, $1,383.19.

Q. The Hanchett and Stark and Chandler, Grant and Gray accounts were probably for legal services, Captain?

A. They couldn't have been for anything else, because they didn't work underground.

Mr. DUNSTAN:

Q. Are those all the drafts that were drawn on Demmon on which the loan of $30,000 was made?

A. I don't know. He has a balance down there against the mine, I guess.

Q. Has there been any insurance of late years on the stamp-mill?

A. No; nobody would take it.

Q. No insurance on any of the buildings, except what you have testified to, that the Franklin paid?

A. That is all. I had to do it in that way to get it.

Q. You spoke a moment ago of Captain Deannis going underground daily and reporting to you.

A. Not daily. I said quite often.

Q. How many times a week?

A. I don't know.

Q. Every week?

A. He goes down as far as the bottom of the man-engine every day, and he has another man to report to him daily.

Judge STONE: How far down is that?

A. The 19th level.

Mr. DUNSTAN:

Q. What is his object in going underground?

A. To get into the Franklin.

Q. They go that way to get into the Franklin?

A. Yes; then we have another man looking after the water and the man-engine. He didn't charge anything for looking after the water. He looked after the man-engine and did the other

427 work as well, and he went all through the levels every day.

Q. Then the men had to go down through the Pewabic to get into the Franklin?

A. Yes, sir; some of them would. Some would go down the ladder.

Q. There is no other way?

A. There is plenty of other ways. There is no other man-engine.

Q. Didn't you have a man go down frequently for the purpose of looking at the compressor as well as the man-engine?

A. Well, the Franklin did that, if anybody.

Q. Wasn't that the principal business of Deannis, to go in, going down that way?

A. No, sir.

Q. What was his principal business—to examine the pump rods?

A. No; to look after the man-engine and keep them greased and other little things he could do that didn't cost nothing.

Redirect examination by Judge STONE:

Q. As a mining man, how long, in your judgment, would it take to pump the water out of the Pewabic?

A. Oh, 2 or 3 months. It would depend upon how the skip road worked. You might, in making an estimate of that, err one month.

Q. It might take four months, you mean?

A. Yes; or it might be done in two or two and a half.

Q. Do you think a sale of that property can be made that will invite competition from outside without an unwatering of that mine?

A. I wouldn't offer anything for a mine I didn't see or have some other competent man to report to me of its condition and value.

Q. In your judgment, do you deem it for the interest of the stockholders to have that mine unwatered before the sale?

A. Most decidedly so.

Recross-examination by Mr. DUNSTAN:

Q. What could a mining man see in the Pewabic if he should go underground?

A. See lots of open ground.

428 Q. He wouldn't see any copper, would he?

A. Yes.

Q. Didn't you testify here six years ago that there was very little copper in sight?

A. Yes. That isn't seeing no copper.

Q. Didn't you testify that there was very little copper in sight?

A. Yes.

Q. Didn't you testify at that time the mine was in very poor condition as far as copper is concerned?

A. Yes, sir.

Q. Therefore if the mine should be open for inspection the only thing they could see would be stopes or open spaces?

A. Yes.

Q. And a very small quantity of copper?
A. Yes.
Q. That is true, is it not?
A. Yes; my statement was correct; I was under oath.
Q. The maps of the mine show accurately the amount of work underground?
A. As far as may be. Some engineers may have erred sometimes.
Q. And the amount of ground stoped and amount of drifting and sinking?
A. Yes.
Q. The maps also show, don't they, the relative position of the openings in the Pewabic with reference to the Franklin and Quincy mines?
A. Yes.
Q. In that way, therefore, would any bidder be aided by going underground?
A. He would be satisfied what he was bidding for.
Q. Would he be enlightened in any way with regard to the prospective value of that property?
A. He might; there are indications that he might see.
Q. And you have testified as to the indications already?
A. He ain't bound to take my testimony.
Q. There have been something like 15 or 20 witnesses who testified in this case six years ago in regard to the prospective value of that property?
A. I think so.
Q. And among the number were several who had been underground just previous to the taking of that testimony?
A. Yes.
429 Q. And the testimony of men who went there and examined the property at your request?
A. Yes.
Q. Captain Tompkins?
A. No, sir; Capt. Tompkins didn't go at my request. He said it was rich. You will find by his report that it was rich. If he had that *that* there was millions in it; so you see they better not take my statement.
Q. Capt. Daniell went underground and examined it?
A. Yes.
Q. Of the Osceola and Tamarack?
A. Yes.
Q. Do you know others that have been there at your request?
A. Captain Hall, I believe.
Q. Didn't you or some one connected with the Pewabic management request Capt. Tompkins to go underground and make an examination?
A. I don't know.
Judge STONE: What, in your judgment, would it cost to remove the water from that mine?
A. I don't know.

Q. You have no judgment on the matter?

A. I shouldn't—not this moment. I would figure up and let you know what I think about that.

Mr. DUNSTAN:

Q. Could you get the water out of the mine with the present pumping appliances in it?

A. Yes; and the hoisting engine. You could work the skip to the bottom part.

Q. You would need skips, would you?

A. Yes; the skips are there.

Q. How long, in your judgment, with the use of the skip you speak of and the present appliances in the mine, would it take to pump her out?

A. I have answered that question.

Q. It would take an indefinite length of time, wouldn't it—all the way from 2½ to 4 months?

A. It would vary from 3 to 4 months. I don't want to vary it any. I beg leave to refer to that I have said before.

430 Q. In your judgment, is the present pump in condition to undertake the pumping out of the water without repairing?

A. I think it could be done.

Q. In the present condition, without any repairs to it?

A. It might want ordinary repairs; may want a little piece of timbering. It will want changing of valves, and the pump rod might give out and the engine-house might burn down, in fact.

Q. But as far as the giving out of the pump rods, etc., they are contingencies that might happen any time?

A. Yes; any time and with any pump. She is still working.

Q. When did you last examine the pump rods?

A. I haven't examined the pump rods for over two years. I have got reports from them.

Q. And not in person. From your own personal knowledge you don't know the condition of the pump?

A. Not exactly, but I have got enough idea that it is in working condition and is actually working.

Q. Suppose it would give out, how much would it cost to repair it?

A. That would depend on what gave out. Suppose a gear wheel should break, it would cost about $40.

Q. For the gear wheel alone?

A. Yes.

Q. I am speaking of the pump.

A. Supposing the boiler blew up—supposing a piece of pump rod broke, it would cost $6 or $7 to repair it; supposing a piece of the pump burst, it might cost $20. If the shaft all run together it might cost four or five thousand dollars to fix it.

Q. On what do you base your time—your estimate of the time—which it would take to pump out the water?

A. I haven't based it on anything.

Q. Simply guess-work on your part?

A. Yes.

Q. Do you know the quantity of water in the mine?

A. No; no more than Bailey gave the estimate of it.

Q. Do you remember now from his testimony?

431 A. No; I don't remember whether one or twenty million gallons. I heard something about a million. I don't know how many. I don't think a man like that could come within 20 or 30 per cent. of estimating it.

Q. Then in estimating the length of time it would take to pump out the water you would have to figure the number of gallons of water in the mine, wouldn't you?

A. Not necessarily that.

Q. You mean to say the number of gallons of water in the mine wouldn't be any criterion of the length of time it would take?

A. Of course it would; but the trouble in getting water out of a mine is oftentimes in breakages and such things. You have got to take the chances. You may not have any. As I said before, it might make a month's difference by good luck or bad.

Q. When you took hold of the mine several years ago was it then partially filled with water?

A. No, sir; entirely free from water.

Q. Ever have any experience in pumping out old mines?

A. Yes; I pumped out the Centennial the other day.

Q. Doesn't it generally take longer than one figures on in estimating?

A. Sometimes we have done it in less time.

Q. What is the general experience?

A. Estimates are generally under than over.

Further hearing adjourned to Wednesday, Aug. 20, at 2 o'clock p. m., at the office of Peter White, special master, at Marquette, Michigan.

432 MARQUETTE, MICHIGAN, *Aug.* 20, 1890—two o'clock p. m.

Met, pursuant to adjournment, at the office of Peter White, special master.

All parties present by their respective counsel—J. W. Stone, for defendants; Don M. Dickinson & Thos. B. Dunstan, for complainants.

Further taking of testimony resumed:

Judge STONE: Have the books and records been received from Mr. Demmon from Boston?

The MASTER: They have not.

Judge STONE: I want to say here to the master, and I suppose my word will be taken as the truth in that matter, that a few days ago I was informed that they would not be here by the 18th at least. The excuse that was given was that the clerical help was short, and that Mr. Perkins, one of the directors, whom they wanted to verify the statements, was out of town and would not be back until last Monday. I at once telegraphed Mr. Demmon, in the interest of our

firm, that it was important that those papers and books should be here at the time specified; since which time I have received a further excuse along the same line, but saying they would be here very shortly. I wish to make this as a personal explanation before the master, so you will understand I have exhausted all the resources I possess to have those books and papers here at the time agreed upon.

Mr. DICKINSON: Let me ask you, Judge, are you not advised that Judge Talbot has advised them not to produce the books?

Judge STONE: No, sir; I think not. He advised them that
433 he did not think it important to have them here on the day, but they would be here as soon after as convenient. Judge Talbot wrote me that a partial statement was brought in to him, but it wasn't headed as it should be, and he sent it back to be revised and put in shape. He has never said to me he would disobey the order, but it has been along the line of excuses for not getting it on time, and that it wasn't very material to put it in at the time agreed upon.

Judge STONE: I want to offer here these papers from Mr. Yaehnig that we agreed to file to-day—that is, the inventory of 1885 (producing same) and the statement of the taxes of 1889—and you remember he withdrew this partial statement, marked as an exhibit, but I return it again; but this is the one that he substitutes in place of it, a more extended one. Those I promised the clerk I would file here to-day, and I have submitted them to Mr. Dunstan, as we agreed to do.

Papers referred to received in evidence and filed with the master.

Judge STONE: I want it to appear that I have to-day of record suggested the deaths of the defendants Buttrick and Billings, and give you notice. Their death has been suggested of record, and I now hand the solicitor of record for the complainants a notice of that, and in behalf of Boston counsel, with me, I desire to object to any further proceedings in this ca-e with reference to an accounting until the representatives of those defendants are brought
434 in. I do that, Mr. Dickinson, because I am requested to *to* do it. I want it to appear simply on the record that we object to any further proceedings by way of accounting.

Mr. DICKINSON: We have repeatedly stated that so far as we are offering this testimony or proceeding in this hearing we are not proceeding under that part of the decree requiring an accounting, but wholly for the purpose of ascertaining those details required by the decree before a sale.

Judge STONE: You mean with reference to the debts and assets of the Pewabic Mining Company?

Mr. DI-KINSON: Yes, sir.

Mr. DICKINSON: I would like to ask your ho/or whether he has received any excuse or communication of any kind from the witness Demmon, who was here on the 28th of July and was sworn as a witness, and who agreed, upon your honor giving him all the time he required, to file a statement by the 18th of August and to return

the books which had already been offered in evidence and were within the jurisdiction of the court and your honor as a part of the evidence on the hearing.

The MASTER: None whatever.

Judge STONE: Except my statement, of course. I am agent in his behalf.

The MASTER: Except the statement made by Judge Stone here to-day. I meant direct from him.

Mr. DICKINSON: I then ask to have the matter of the conduct of the witness Demmon in taking away the evidence which had been offered in the shape of books from the Boston office and which were received in evidence by the master be certified to the court—of course together with Judge Stone's statement to-day—and
435 certified forthwith as soon as the master can prepare his certificate. Is there anything you want to say as to that, Judge Stone?

Judge STONE: No; I have no further statement to make than I have made. Mr. Demmon, in all that he has said to me, was expressive of the idea that he desired to comply with the order, claimed the shortage of clerical help and the absence, as I say, of one of the directors, and I gather from what he says that he is advised by his local counsel there, which he seems to follow, that it is perhaps not of the greatest importance to have it here just at that time, but that it would be sent along very soon, and I think now it will come very soon.

Mr. DICKINSON: You have no definite time?

Judge STONE: No; I have not, though something was said about Mr. Perkins returning on Monday. That was day before yesterday. Whether he did return so as to verify the statement or not I do not know; I haven't heard from them.

Mr. DICKINSON: The books, of course, were taken; they were already in evidence, and the books were taken by Mr. Demmon at his own request; borrowed from the master to enable him to make a statement with the aid of his books.

Judge STONE: There is no question about the fact; the books were offered in evidence on my statement that we desired to withdraw them for that purpose and they would be returned. I certainly made the statement in good faith.

Mr. DICKINSON: There is no doubt about that.

Mr. DUNSTAN: The return of the books as well as the statement.

Judge STONE: Yes, as well as the statement.

436 Mr. DICKINSON: If the court please, something has been said in the testimony, some suggestion made by your honor, as to the time it would take and the cost of removing the water from the mine, and because of the suggestion on the record we have requested the engineers and competent men to give you full information upon that subject, and that testimony we offer this afternoon.

JAMES MOORE, recalled on behalf of the complainants, testified as follows:

Direct examination by Mr. DUNSTAN:

Q. Since the last adjournment have you in any way considered the length of the time it would take to pump out the water from the Pewabic mine?

A. I have considered how long it would take to get it out by means of a skip, skipping it out, which I think is the only means available now.

Q. And have you also considered the cost of such pumping?

A. I have.

Q. State to the master the length of time it would take, in your opinion, with the present appliances at the mine, to pump it out.

A. It would take six months of twenty-six working days each.

Q. Would any length of time be required to prepare the pumps or mine previous to the commencement of pumping operations?

A. I understand the skip road that we would have to use is out of repair, and we would necessary take some time to get it in order.

Q. What length of time would it take to prepare the road before actual pumping operations could be commenced?

A. I couldn't say from personal knowledge how long it would be.

437 Q. What is your judgment in the premises?

A. I think it would take two and a half months.

Judge STONE: To get the skip road in condition, do I understand?

A. Yes.

Mr. DUNSTAN:

Q. What would be the cost, Mr. Moore, of getting the road and pump in condition to be used for getting out the water and also pumping out the water from the mine?

A. The quantity of water that was making at the bottom of the mine when I was there at the time averaged twelve skips a day, and the skipping of this water was stopped in November, 1885, and has been accumulating since, and it was from these twelve skips of the bottom water that I made the calculation of the quantity of water in the mine; counting those twelve skips as accumulating for so long, and then allowing five skips per hour for 24 hours per day, it would take 156 days to get the water out. Then there would be labor attached to that, and I have put down two engineers, at $52 per month, for six months; that would be $624.

Q. That is for the engineers, you mean?

A. Yes; there would be four firemen, at $50 per month, equals $1,200; two landers, men at the mouth of the shaft, would be $540; four men in the mine, at $45 per month, amounts to $1,080, and sixteen cords of wood per day would amount to $7,488. Then the old mine pump, running at two cords of wood per day, would equal $936; two men to run it, at $45 per month, would equal $540, and

it would necessitate a new rope. The rope there isn't reliable; it has been around the drum 5 years or six, and it isn't safe. Then there is repairs to pulley stands and little repairs on the
438 engine that would amount to $100. It would bring that total in at $13,438 for skipping that water out.

Q. Does it need any teaming to get the wood—I speak of the teaming of the wood from the place it is deposited—to the boiler-house?

A. A team at $5.00 per day would amount to $780, and a helper at $45 per month would be $370; it would amount to $1,050 pulling the wood to run the engines.

Mr. DICKINSON: Hadn't you included that in the cost of your wood before?

A. Not the teaming, I didn't, not the pulling.

Mr. DUNSTAN:

Q. Well, go on.

A. There would be extra cost for this repairing of the shaft; we would have to run the pump to keep the surface water up all the same, and I calculate that would be——

Mr. DICKINSON: In what shaft?

A. No. 4, the pumping shaft. That would be 2½ months with the engineer there, at $45 per month, $112; would have to have an engineer of the hoisting engine at $52; that would be $130; and one lander at $45 per month would be $112, and one fireman at $50 per month would be $125, and to run the hoisting engine 65 day at 4 cords per day the cost of that wood would be $780, and to pump 65 days at 2 cords per day would equal $390. Then there would be 37 days teaming wood at $5.00 per day, and 37 days for helper at $1.75 per day, both equal $250.

Mr. DUNSTAN:

Q. What teaming of wood is this that you speak of, of 37 days at $5 per day and helper the same number of days at $1.75 per day?

A. This is the wood necessary to run the pump and hoist-
439 ing engine during the time the No. 6 shaft is being repaired, before the hoisting of the water can go on.

Q. Would it be necessary to have a boss or superintendent of this work?

A. I should think so.

Q. For the eight and one-half months in question?

A. For the eight and one hal- months at $75 per month would amount to $637.

Q. Therefore the total cost, in your opinion, would be what?

A. $17,024?

Mr. DICKINSON:

Q. I would like to ask what would be the purpose of running the hoisting engine and pumps while you were preparing—during the 2½ months while preparing the shafts.

A. The running of the pump would be necessary to keep this surface water from running down into the bottom.

Q. Why run the hoisting engine?

A. In repairing the shaft it would be necessary to lower timber and pull it up and down—lower timber into the shaft and pull up what they were taking out.

Q. Have you examined so as to know the condition of the timber in No. 4 shaft?

A. It was very poor when I was there.

Q. When were you there last?

A. I think I was there in 1888. I went down to thaw out the column; the column had frozen. I went down to thaw out the column, and the hanging was coming in so close that I had to get on my breast to squeeze through to get up the ladder-way.

Q. What is the "hanging"?

A. The upper roof where the road leads down in that direction (indicating), and the bottom they call the foot wall, and the top they call the hanging wall.

440 Q. I understand what you mean by hanging wall. How did that come to be down so low; had it sagged?

A. It is gradually sagging, coming in close.

Q. How was the timbering in that shaft—sound or rotten?

A. Very rotten, what I saw of it.

Q. What, in your opinion, is the condition of the shaft, as to being dangerous?

A. I was afraid to stay in there. I used steam to thaw out the column, and I felt secure as long as the ice remained around; but as the steam got there and was warming up, and the ice falling around, I was afraid the ground would come away, and I hurried up as much as I could.

Q. You could tell from the looks of the timber there what condition it was in, in that shaft?

A. It was very rotten, what I could see of it.

Q. Did you consider it dangerous?

A. I did.

Q. How was it in No. 5 shaft?

A. I don't know No. 5 shaft.

Cross-examination by Judge STONE:

Q. Did you testify before on this subject at Houghton, Mr. Moore?

A. No, sir; I don't know as I did.

Q. On the subject as to how long it would take to unwater the mine—I don't know—I am not positive that you did.

A. No, sir.

Q. What is the depth of the water there?

A. They tell me it is up to the 26th level, but I have not seen it and do not know the condition of the mine. I haven't been down in No. 6 at all.

441 Q. On your estimate you take it for granted that there is how many feet of water there; how many feet of water do you take it for granted there is there, on this estimate of yours?

A. I think there is about eight hundred feet of water.

Q. You have considered that 800 feet in your estimate; have you any idea as to the number of gallons there, of your own knowledge?

A. About ten million gallons. The only way I could come at that would be the coming water in the bottom all the time; that equals twelve skips per day, and the capacity of those skips was 72 cubic feet, and that has been accumulating since November, 1885. Now, about neglecting the upper water, the upper pump, and letting some of that water from the upper pump to overflow from the neglect of running the pump and letting that run down into the mine, so as to increase the bottom water, I don't know whether that has been done; it is likely to suppose that some of that did run down—an unknown quantity, if there did any run down.

Q. Don't you know the surface water has been kept pumped out?

A. No; the pump was running, and that was the object of keeping the pump running, to pump out the surface water.

Q. In this estimate of yours you have included the expense of continuing the pumping of that surface water, have you not?

A. Yes, sir; the pump can reach that water.

Q. How far down does the pump go?

A. It goes down to the 130th; the lowest pole, I think, is on the 130th.

Q. Is it about the 18th level the pump reaches?

A. The 130th would be the 18th level; there may be some draw-lifts run lower down.

442 Q. I understand that this water that is in the bottom is below the reach of the pumps, of course, as they work now?

A. Yes.

Q. And is water that has accumulated from the bottom of the mine, or that has come in not from the surface; is that your understanding of it?

A. Yes, sir.

Q. It appears in evidence in this case already that the surface water has been kept pumped, and that work is going on all the while, the pumps are being used. Some testimony has been given as to the direct and indirect object of that pumping?

A. Yes; there is no way the surface water could go down unless the pumpman neglected his duty and let the pumps flow over. If it got over, the water would go to the bottom of the mine.

Q. Did you hear the testimony of Mr. Bailey on this subject—the unwatering of the mine?

A. I believe I did.

Q. You remember he testified that in his judgment it might perhaps be done in three months or about that time?

A. Yes.

Q. Mr. Bailey is an expert mining engineer, is he not?

A. Yes, sir.

Q. But you think it would take six months to remove the water and 2½ months to make preparations to remove it by the skip, I understand?

A. I do believe it would take six months to remove the water by the skip.

Q. Is the removal by the skip the most practical way of doing it, in your judgment?

A. I think so; yes, sir. It is the only means at hand.

Q. But aggregate this sum of $17,000 and upwards, you have included the expense of continuing the work that is being done there now, have you not—that is, running the pumps for the surface water?

A. Yes, sir.

Mr. DICKINSON:

443 Q. I suppose it would require substantially the same preparation, the No. 6 shaft, hoisting shaft, to run the skips as it would to hoist ore, wouldn't it—substantially the same preparation to run the skip to raise the water as to hoist ore, would it not?

A. Yes, sir; the shaft would have to be in good condition to do anything.

Captain THOMAS WHITTLE, recalled on behalf of the complainants testified as follows:

Direct examination by Mr. DUNSTAN:

Q. Have you at any time seen evidences of an overflow of surface water from the pumps in the 18th level?

A. Yes, sir; when I was down examining the mine.

Q. When was that?

A. That was—well, I forget the date—it was on Monday, just before the court went in session for the first time.

Judge STONE: Just before you testified before?

A. Yes.

Mr. DUNSTAN:

Q. Last month?

A. Yes; last month.

Q. What evidence did you see of that fact?

A. I seen where the small dirt—the fine dirt—had been washed down on the foot wall, and it had accumulated in different places; where the water had flowed down over it seemed the water had come from the pump.

Q. Describe particularly at what points where you noticed those things?

A. On the 19th level, near No. 6 shaft—between the No. 5 and the No. 6 shaft.

Q. There was a pump there, was there?

A. No; there was no pump there. There was a pump at the 18th level. There was also a pump on the 17th and 16th and
444 15th and 14th that water was taken up with draw-lifts up to the 18th level, where the poles are, but it looks to me that this water came down from an overflow. The water is brought along on the foot wall to carry it into those pumps.

Q. Have you made an estimate as to the leng*ht* of time it would take to unwater the Pewabic?

A. Yes; somewhat.

Q. Since you gave your testimony the last time before the special master?

A. Yes.

Q. What, in your judgment, would be the length of time required to unwater the Pewabic with the present appliances at the mine?

A. It would take about six months to take the water out. It would take about two and one-half months to repair the shaft for taking the water out by the present appliances.

Q. When you say it would take two and one-half months to repair the shaft, do I understand you to mean that would be work preparatory to getting out the water?

A. Yes, sir.

Q. Make in all, then, about eight and a half months?

A. Yes, sir.

Q. Have you estimated the cost it would take to unwater the Pewabic?

A. Yes, sir.

Q. Please state the cost, in your judgment.

A. It will take about $19,282 to unwater the mine—that is, including the repair of the shaft.

Q. State briefly what is absolutely necessary to be done or what would be absolutely necessary to be done in order to repair the shaft and get it in shape to unwater the mine.

A. In the first place, it would require a new cribbing of collar shaft; that would be $270, including labor. Further, it would take—the skip road is covered with hard-wood plank from
445 surface to bottom, and it would require new covering from the surface to the 26 level; that would take $180 for timber alone. It would take about 1,800 feet of new runners to carry skip, mostly from 10th to 20th levels; timbering alone, $152. It would further take 1,500 feet of ten-inch flat timber for sleepers and foundation timbers, $150; timbering for braces to hanging and securing ground, $100. To build 700 feet of ladder roads and blacksmithing—that is, they require some iron-work to do this work, $200; labor and cost and other items, $2,000; for candles for men to see to work with, $55; total, $3,107.

Q. State generally the other items that would swell the amount to about $19,000, in you- judgement.

A. The other items I got mostly from Mr. Moore, and the little I have seen there and gave a little calculation on it is this: Surface repairs, pulley stands, shaft-house, and placing wire rope and sundries, $400; pumping surface water 2½ months during repairs, items, fuel, and labor, $500; new wire rope, 3,100 feet, at 30 cents a foot, $930; pumping surface water for 6 months, 2 cords per day, $3, $936; hoisting water 6 months, fuel, and labor, and superintendence, $12,109. There is a-other item here, pumping water to surface—I mentioned that just now; that comes in. New wire rope is $930;

pumping surface water six months is $936. The other items of drawing wood to fire hall and labor, $1,300; total, $19,282.

Q. And that, in your judgement, is the amount of money it would require to unwater the Pewabic mine with the present appliances?

A. Yes, sir; with the present appliances.

Mr. DICKINSON: You are quite familiar with the Pewabic
446 mine; you were formerly captain at that mine, were you not?

A. Yes, sir.

Cross-examination by Judge STONE:

Q. You testified on this subject as to the depth of the water, did you not, when on the stand before?

A. Yes, sir.

Q. How deep is it, in your judgement?

A. There is about 800 feet in depth.

Q. How many gallons of water do you estimate?

A. From nine to ten millio*l* gallons.

Q. Did you testify, when on the stand before, as to the probable length of time it would take to unwater the mine?

A. Not definitely. You asked me -- it would cost.

Q. And you gave your opinion at that time.

A. You asked me whether I could, and I said no, I couldn't, because I hadn't made any figures; and you asked me to give it approximately, and I said I couldn't.

Q. Did you afterwards?

A. Well, you asked me whether it would cost something about ten thousand dollars, and I think I said no, I couldn't tell then, because I hadn't given any -igures on it.

Q. Did you also at that time give your judgement as to the length of time it would take as about three months?

A. I think not; I ain't certain that I did.

Q. Well, you thought then it would cost not exceeding ten thousand dollars. Now you say it would cost upwards of $19,000?

A. Yes; by figuring on it and seeing how much it would cost, I now find that it will cost that amount of money.

Q. That includes the expense of running the pumps, I
447 suppose, for the surface water an- all?

A. That includes the whole thing.

Q. That includes work that is being done now and has been done all along—the continuance of that work?

A. Yes; the continuation of that work.

Q. So that you include in this statement -ot only what it would take to unwater the mine from the bottom of the mine, but also to keep the surface water out?

A. Yes, sir.

The MASTER:

Q. Were you captain at the time of the shutting down of the mine, in 1884?

A. Yes, sir.

Q. How long previous to that?

A. I took charge of the mine in 1882—July, 1882.
Q. A little over two years?
A. Yes; at the time I was there we sunk six levels.

Judge STONE:

Q. Can you tell just when you did shut down there? There seems to be a little condition of doubt about that.
A. I couldn't say exactly when we did shut down.
Q. Was it in the month of July, 1884?
A. Well, now, that I could't say exactly, what time we did shut down.
Mr. DICKINSON: About the time of the commencement of this suit?
A. Yes; that was about the time. I know the suit had taken place before we had orders to clean up everything.

Redirect examination by Mr. DICKINSON:

Q. I suppose when you were examined before and was asked by Judge Stone as to the time and cos- of unwatering the mine you had not given the matter definite and mature consideration?
A. I had not.
Q. You have done so since?
A. I have.
Q. During the time you were captain were you thoroughly
448 acquainted with all the underground workings of the mine?
A. Yes, sir.
Q. Upon that point are there maps and plats of all the underground workings?
A. Yes, sir.
Q. To their remotest extent?
A. Yes, sir.
Q. And even of the drill explorations?
A. Yes.
Q. Do you think it would be necessary for any one that wanted to buy that 160 acres of property and the mine equipment to go into the mine?
A. Not at all.
Q. Is there any indications there that are not already shown by the evidence taken in the case and in the maps that are in evidence—any indication of copper or good ground?
A. No, sir.
Q. Could it be discovered by any one going in there?
A. Not at all; no more now than it could be before the water was left in there.
Q. You have been in this business of mining engineer for how many years?
A. For the last ten years.
Q. What, in you- judgement, would be the opinion of a mining man if it was suggested that it was necessary for a proposed purchaser to see the inside workings of the Pewabic mine?

A. I don't think there would be any one that would care about going in there, because they have already seen that, already know the bottom of the mine, and the different points; there is nothing there of value to be seen. I don't think there is a mining man on Lake Superior that would care about going in there to see the mine if the water was taken out.

Q. Do you know how much of the area of the 160 acres purchased from Edwards—the Edwards purchase of the present mine site—has been used in mining?

449 A. I could tell by the maps.

Q. Well, about how much, from memory—how much of the land has been worked?

A. I think we have gotten down about from nine to ten hundred feet in the new land.

Q. About 1,000 feet, and how much area is covered by the drifting or levels?

A. I think, as near as memory will tell me now, that we have the furthest extent on the 30th level—that is, opened up about ten hundred feet north and south.

Q. Well, the whole area of mining in that mine, including the levels, the farthest extent of the levels of the area that has been worked, would it include an acre of land?

A. Well, I could hardly say now; I forget the distance of the different levels.

Mr. DUNSTAN:

Q. How long have you been engaged in mining in the copper district of Michigan?

A. For the last 13 years.

Q. Were you engaged in mining in any country previous to that time?

A. Yes, sir.

Q. Where?

A. In South America, in Chili.

Q. How long were you engaged in mining there?

A. 4½ yrs.

Q. And for what kind of mineral?

A. Copper ore.

Q. Previous to that time were you engaged in mining anywhere?

A. Yes, sir.

Q. Where?

A. In Cornwall, England.

Q. For what kind of mineral?

A. For tin and silver—lead.

Q. For copper ore?

A. No; not for copper ore in Cornwall.

Q. How long were you engaged in mining in Cornwall, England?

A. From the age of sixteen.

Mr. DICKINSON: So you have been mining all your life?

A. Yes.

Mr. DUNSTAN:

Q. And you are now how old?

A. 47 years old my next birthday. I have been engaged
450 in mining captain during the last ten years.

CHARLES F. BAILEY, recalled on behalf of the complainants, testified as follows:

Direct examination by Mr. DUNSTAN:

—. Have you considered the length of time it would take to unwater the Pewabic mine since you were last examined before the special master?

A. Yes, sir.

Q. Have you formed a conclusion as to the length of time it would require with the present appliances of the mine?

A. If they hoist at the same rate they did before, taking the accumulation of 12 skips per day, 313 working days in the year, for five years, and hoist at the smae rate, it would take them six months.

Q. What length of time would be required in preparation for the unwatering of the mine?

A. I considered Captain Whittle's estimate of 2½ months for repairing the shaft, getting wire rope in place, getting shaft-house in shape, as reasonable, working day shift.

Q. The appliances that you speak of would include what?

A. Would include running present pump to keep out the surface water, provided it didn't give out; putting the No. 6 skip road in shape to hoist the water in skip, hoisting the water to the surface, with the same appliances that they used before.

Q. The hoisting water, I take it, with the skip is done in No. 6 shaft?

A. Yes, sir.

451 Q. And the pump is in what shaft?

A. No. 4, down to the 12th level, and it is carried across to No. 5, and draw lifted from the 12th to the 18th level, the pump reaching at bottom only to the 18th level.

Q. Have you formed an opinion or made any estimate with reference to the cost of unwatering the mine?

A. I have examined the estimate made by M-. Moore and Captain Whittle; I have examined the shaft and examined the shaft-house. I consider Captain Whittle's estimate of something over $3,00- for putting the shaft in shape as a cheap estimate.

Q. Moderate, you mean?

A. A moderate—a fair estimate. The cost of run-ing as given by Mr. Moore is reasonable. The cost for running the pump and keeping the water out, the surface water, on his estimate amounts to less than $2,000 the 8½ months, and on the old system they were charging up $450 a month, which, at eight and one-half months, would have made about once and three-quarters as much, and it seems to me that I can see where, on a basis of 8½ months' work, $18,000 would go to, and I should expect that items would come up that we haven't considered. It would be very strange if they didn't.

Q. As a general thing, does it cost more to pump out a mine or unwater a mine than the original estimate?

A. It generally exceeds the estimate, especially where you take an old mine. There are items that you cannot figure on. The National mine—it took them considerable longer and cost them considerably longer than they originally figured.

Q. Who *is* the Michigan director of the National mine when it was unwatered at the time you speak of?

452 A. The estimate for the time it would take was made by Captain Vivian and the work was under his direction.

Q. And it took him longer there than the original estimate, did it?

A. Yes, sir.

Q. Do you know whether it cost more to unwater the National than the original estimate?

A. I can't say definitely about that.

Q. Then in your judgement it takes at least how much money to unwater it?

A. I think I can see where $18,000 could be spent, and I should expect items to come up to run it up to more than that.

Q. Do you know of any property that has been recently sold in the copper district of Michigan where it was not unwatered?

A. The Arcadian was lease-, and there was -o thought of unwatering it to determine the character; its record as a mine when it was working was considered quite sufficient. A report was made on another mine that I do not wish to mention, and the expert who made the report had no thought of asking them to unwater it. The record of its stamping was used; the record of the mine, the accounts of competent men who had examined it when the rock was fresh, was used, and the report was made up, and there was no thought of asking them to unwater it. The proper time to examine ground is when it is freshly broken; it shows its natural color; you can tell by the looks of the rock what the prospects of its mining character are.

Q. Do the maps of the mine afford any means of ascertaining its value in connection with the percentage of copper?

A. To quite an extent, especially if there are drill-holes, giving the character of the ground explored.

453 Q. And would the location of the mining property, with reference to other successful or unsuccessful mines, be of use in determining its market value?

A. The position and character of known lodes in connection with the property in question would have a very strong influence in determining the value of that property.

Q. Would the unwatering of the Pewabic mine, therefore, afford purchasers any facilities for determining the value of the property?

A. The ground would be discolored and would need to be fresh; broken rock would need to be gotten at to determine the look of the ground. In the case of the Pewabic the records are so complete with regard to it that it would be much less necessary than in the case of several other mines that I know of that have had reports

made on them or leases made out or have been sold without any such process.

Q. During your residence in the copper district have you known of any mine being unwatered preparatory to a purchase?

A. There has been none so far as I know; I feel quite sure there has been none.

Q. Do you know of the recent sale of the Wolverine?

A. I know of it.

Q. Was that unwatered before it was sold?

A. Not at all.

Judge STONE: Very little water in it, was there not?

A. I didn't examine it; but all the mines have more or less water; fill up more or less rapidly.

Mr. DICKINSON:

Q. Q. Suppose in addition to your ordinary record you had the testimony of the mining men who had actually worked the mine up to the point of shutting down and of all the men familiar with the workings of the mine and of the men who had conducted diamond-drill explorations for good, and the testi-
454 mony of all these men was that in the workings and in the diamond-drill explorations no paying ground was found, do you think a proposed purchaser would make anything by going into the mine in his investigation as to whether this 160 acres was valuable?

A. I do not. In the first place, if I had a valuable report from the man who examined that day by day, as the work was going on, and saw the freshly broken ground—if I had a definite report from him, I should think it useless to go in to attempt to determine the character in discolored rock.

Q. Can you tell us anything about the area that has been worked of the 160 acres?

A. I haven't figured——

Q. About.

A. But I should judge from $\frac{1}{7}$ to $\frac{1}{10}$ part only has been explored, and that $\frac{6}{7}$ to $\frac{9}{10}$ is quite unexplored; that the portion explored the character of the ground is thoroughly known, admitted by all parties, and the chief value would be in the prospective value, the unexplored part.

Q. And in the situation between the Quincy and the Franklin and contiguous to both on the Pewabic lode?

A. Yes.

The WITNESS: With regard to my former estimate of the time it woul- take to pump out the water, it was made on a basis of new appliances, building a new water skip that would cost more money and be a permanent asset of a working mine, and that accounts for the difference; using present appliances it would take six months.

Captain SAMUEL B. HARRIS, a witness sworn on behalf of the complainants, testified as follows:

Direct examination by Mr. DICKINSON:

455 Q. How long have you been engaged in the mining business?

A. Ever since I was twelve years old.

Q. What is your age?

A. I am in my 56 year.

Q. And how long as mining captain?

A. Since 1864; about 26 years.

Q. 26 years as mining captain?

A. Yes.

Q. How long in the copper country, in this copper country of Michigan—how long have you been engaged in mining in the copper district o- Michigan?

A. Close on to 30 years.

Q. You are now superintendent of the Quincy mine?

A. Yes.

Q. Of the mine and stamp-mill and the whole works here?

A. Yes, sir.

Q. You are the manager for Michigan of the great Quincy mine, I suppose?

A. Yes, sir.

Q. Are you familiar with the Pewabic mine?

A. Slightly.

Q. How far is it from the Quincy?

A. Adjoins it on the north.

Q. What is the condition of the equipment of the Pewabic mine? Is it deterio-ated and run down or is it in prime condition?

A. Well, I cannot say from personal examination.

Q. Then I won't ask you about that. Will you state whether a proposed purchaser of the Pewabic mine, of the Pewabic mining property, covering 160 acres of that opened land or the remainder of it that is not opened, would require to personally inspect it?

A. No.

Q. What would a mining man say to such a proposition, to personally inspect the inner workings of the Pewabic mine when there are plans of every working in it, of every level, and of every stope and of every drift and shaft, and even of the drill-holes, and also the testimony of men who have been working in the mine as to the prospects from these workings and from these explorations?

456 Judge STONE: I suppose you ask his judgment on it?

Q. Yes; I ask his judgment as a mining man.

A. I should think such a request as that bordering upon the absurd. I should consider such an examination entirely unnecessary.

Q. Would it do any man a-y good to go into the mine and look at the end, top, and sides of the levels?

A. I think not; it is entirely unnecessary.

Q. Would it do him any good or give him any information as to the richness of this ground?

A. No, sir.

No cross-examination.

DANIEL KLOECKNER, a witness sworn and examined on behalf of the complainants, testified as follows:

Direct examination by Mr. DICKINSON:

Q. What is your profession or occupation?

A. A bookke-per.

Q. Do you consider yourself an ekpert book-keeper?

A. Well, I don't want to appear egotistical; no, I don't consider myself an expert.

Q. How long have you been engaged in that kind of business?

A. About twenty-one years.

Q. You are now engaged in the adjoining mine—the Quincy?

A. Yes, sir.

Q. As book-keeper of all their business?

A. Yes; at the mine.

Q. Have you examined the statements filed by Mr. Jaehning, the book-keeper of the Pewabic mine?

A. Yes, sir.

Q. Will you tell the master about what it cost per month, at the rate they have been spending money, in taking care of the
457 Pewabic mine since they have shut down?

A. Yes, sir. I will have to refer to the statements we have drawn up.

Q. You can state from the examination of the statement.

A. It appears here, from the statement drawn off from the books, that they expended in 1885 $19,727.50. That, I take it, is after the mine had closed down. It closed down some time previous to that time, didn't it? Better take that for a basis. The receipts for the same period were, from all sources, including the rents of houses, ground rents, royalty from brick yard, and other sources, and also from the use of compresser and man-engine, $6,560.90.

Q. You don't include in that anything for sales of supplies?

A. Yes; that includes that. It didn't amount to anything; didn't cut any figure. There was a little labor in that, too, that was done for other parties; that is for 1885. For 1886 the total expenses have been—total disbursements, $10,331.69.

Q. This is at the mine, not including the Boston office?

A. Not including the Boston office.

Q. What were the receipts?

A. The receipts for the same year, 1886, were $13,085.97—receipts that cover the same items that I mentioned in 1885.

Q. Any sales?

A. Yes; there were a few sales of supplies—a small amount.

Q. Does that $13,00– include rents?

A. It includes rents, use of man-engine, royaly of brick yard, use

of compressor, and supplies sold and some labor sold, labor done for other parties and received credit for it- payment. For 1887 the disbursements were $9,094.50. The receipts for the same period and from the same sources as in the other years were $8,046.58.

458 Q. How much of that is for property sold, if any?

A. I guess that comes along a little later.

Q. Well, go ahead.

A. For 1888—total disbursements for the year 1888, $10,067.49; that includes taxes and all labor in taking care of the property, fuel, agent's salary, and so on; and the receipts for the same year, 1888, were $7,199.76, from rents and same sources as the others were. For 1889 the total disbursements were $7,800.25; that is principally for fuel and labor and taking care of the property and running the pump.

Q. Salaries, I suppose?

A. Yes; salaries and wages of men. The receipts for the same period—now, do you wish to have included in the receipts in this item the amount that was received from the Quincy and Torch Lake Railroad Company for the right of way across the Pewabic?

Q. No; I want the items, without that, of income from the property.

A. That appears in this statement, and I will have to deduct that amount. The receipts for the same period, less that amount, was $8,076.01. That includes considerable supplies. I see an item here of about $1,000--two items.

Q. Sale of supplies?

A. Yes. Now we get down to the last six months in 1890. The disbursements from January 1, 1890, to the first of July, which were for fuel, agent's salary, and labor in keeping the water out and taking care of the property, as they claim, $4,801.75. The receipts for the same period for rents of houses and ground and use of man-engine and compressor only, and $150 for rent of brick yard, amount te $2,777.66. That is as far as it goes.

459 Cross-examination by Judge STONE:

Q. Those statements are taken from the statements filed, are they?

—. This statement that I read off was taken from the books of the Pewabic Mining Company; we had them in our possession.

Q. Does the same appear in M. Jaehning's statement on file?

A. Yes; he has about the same thing in there. We have got it in a little different shape. These were all gotton off before Mr. Jaehning got his statement.

Q. That includes salary and charges made by Captain Vivian for the care of the property as made by him?

A. Yes.

Q. And clerk's services?

A. Yes; all that.

Q. Does it include anything for insurance for any of the years?

A. It does for some years.

Q. Does it for whenever it appears?

A. Yes; but there wasn't anything in here for a year or two.
Q. Anything paid attorneys?
A. Yes, sir.
Q. Include all those items, does it?
A. Yes, sir.

Mr. DICKINSON: I think I have finished the oral examination.

Judge STONE: I think we have finished the oral testimony, so far as the statement of debts are concerned; but we do ask that when the statements from Boston are received that they be filed with the master, and the books. I have no doubt they will be here in his hands this week.

Mr. DICKINSON: I will request the master to make a report immediately to the court as far as he has gone.

Judge STONE: We object to any report being made, at least until after the 28th inst., the time fixed by the master for
460 the hearing of claims, because we heve some claims to file, and, as long as the master has given that notice, it seems to me only just to creditors that they have that time to present their claims against the Pewabic Mining Company.

Judge STONE: I do not care to make any argument about this matter.

Mr. DICKINSON: We do not care to make any argument.

Mr. DICKINSON: Let it appear that counsel do not care to make any argument on this matter.

Mr. DICKINSON: I desire to submit to the master for his examination the request of the majority of the stock to make his report at once; and the best evidence that I can submit of the majority of the stock is the certificates, which I herewith ha-d to the master, with a statement which he may find convenient, of 21,175 shares, standing in the name and owned by Mason and Smith, the complainants; standing in the name and owned by Brown, Riley & Co., of Boston, and E. W. Mussey, F. A. Hawley & Co. I shall also state to the master that I have received from the stockholders, notably Brown, Riley & Co., outside of my original clients, a request to facilitate the sale as rapidly as possible, for the reason that all mining interests, copper mining interests, and copper interests of every character and description are at the present exceptionally active, and there are no definite prospects that it will continue so; that now is the time, if at all, for the property to bring the highest price obtainable. I further, in case there is any question in the master's mind about the indebtedness, and as the object of the hearing
461 is to fix a minimum bid, I now state to the master on my own personal responsibility, as instructed by the stockholders and adding my personal responsibility to it, that the minimum bid which I will make will exceed the $50,000 named in the decree by $100,000, sufficient to cover any possible indebtedness, contingent or otherwise.

The MASTER: Did you state, Mr. Dickinson the number of shares?

Mr. DICKINSON: Yes, sir. I handed you a statement—I intended

to—for your convenience. The total number of shares, as you will find them to be, is 21,175 shares. I will leave those for the master to examine and verify (referring to the stock certificates) for the purpose of submitting to the master and the court the amount of stock, asking for the immediate report and for the immediate sale of the property; and, in behalf of the stockholders of record who are not already parties to the cause, I shall move court for leave to intervene in their behalf and take the benefit of the decree.

Judge STONE: Let it appear that the defendants' objection is entered to this.

The MASTER: Neither side wish any further adjournment of this hearing.

Mr. DICKINSON: Not on this hearing—not on this branch of the case.

Judge STONE: We ask for a hearing before the master before he makes his report, at a time to be fixed subsequent to the 28th inst., the time fixed by the master for the filing of claims against the Pewabic, in which to be heard on the testimony already taken as to the character of the report.

The MASTER: The master, having counted up the stock
462 certificates exhibited by Mr. Dickinson, finds the statement correct.

Mr. ——: I would like to ask the master to rule that he will at once report to the court the condition of the property and the debts if he is satisfied that he has taken sufficient testimony to do it.

Judge STONE: We wish to solemnly protest against the proceeding, for the reason that the time fixed by the master himself has not elapsed. We have some claims to file, which I have prepared at home, and shall submit them here before the 28th, and it appears in evidence that the claim of the Franklin Mining Company is a promissory note, and it certainly has not been produced yet, and the time has not elapsed in which they have a right to produce it.

The MASTER: The amount of it is settled and has gone upon the record. The computation of the interest would be a simple matter, and the other claims—Mr. Demmon's testimony is that they can arrive at the amount of them very easy—that is, a minimum or maximum amount—and Mr. Dickinson's bid or offer to bid for the m-jority of the stock will be so far above any possible contingency of the indebtedness that I feel warranted in taking the course that he suggests. Without that I should feel just as Judge Stone says—that I had no right to close the case before that—but with the non-appearance of the books or any statement it seems to me that I can give in my report sufficient data for the court to determine that the bid will be cer*a*inly way beyond any possible indebtedness added to $50,000.

Mr. DICKINSON: I suppose we may also have our certificate of the behavior of Mr. Demmon?

463 The MASTER: I suppose that follows as a matter of course.

The last thing Mr. Demmon said to me was, Suppose the books and statements don't arrive here on Monday, the 18th, will they be received on the next day? He figured on whether the express

could get through, and I had some doubts about it myself—if he expressed them Saturday afternoon, whether they would get here Monday noon, the day they were to get here, and I replied if they got here Tuesday it would be just as well; that if he sent them Saturday his responsibility would end there, and he promises sacredly that he would; said there was no trouble in getting the statement off so it could be sent Saturday, the 18th. Before that we had discussed somewhat about their coming here upon the 21st or 22nd.

Taking of testimony closed.

Endorsed: The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Master's report. Filed Aug. 26, 1890. C. L. Fitch, clerk. Refiled September 18, 1890. F. M. Moore, dept. clerk.

464 WESTERN DISTRICT OF MICHIGAN, *Northern Division:*

I, Charles L. Fitch, clerk of the circuit court of the United States for the western district of Michigan, do hereby certify *that* the above and foregoing, excepting the index, to be true copies of the records, files, papers, and proceedings on file and of record in the case of Thomas H. Mason, William Hart Smith, and Sullivan Ballou, complaina-ts, *vs.* The Pewabic Mi-ing Company, The Pewabic Copper Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, a-d Daniel L. Demmon, defendants, in said court made, filed, or had since and including the mandate of the Supreme Court of the United States therein, of the bonds on appeal filed therein, and of the citations issued by the defendant The Pewabic Mining Company and the proof of service of said citations, together with such testimony as has been filed in my office by the special master; that I have compared the s-me with the originals thereof of record and on file in my office and the same are true copies thereof, excepting only that the above and foregoing do not contain the -iles and proceedings relating to the collection of the costs of the former appeal nor the special master's notices of sale and proof of publication thereof nor his notices to creditors of the Pewabic Mining Company to file claims and proof of publication of said notices, which said omitted papers, files, and proceedings I am instructed by counsel for appellants are not a necessary part of the record in this cause on appeal.

Seal of the U. S. Circuit Court, Western District of Mich., Northern Division.

In witness whereof I have hereunto set my hand and the seal of said court, at Marquette, this 13th day of August, A. D. 1891.

CHARLES L. FITCH, *Clerk*,
By F. M. MOORE, *Deputy*.

Clerk's fees, —.

465 Circuit Court of the United States, Western District of Michigan. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden D. Buttrick, Daniel L. Demmon, and The Pewabic Copper Company, and Alfred A. Marcus, Intervenor.

Claim of Appeals.

The above-named intervenor, Alfred A. Marcus, conceiving himself aggrieved by the orders entered on March 2, 1891, and April 27, 1891, in the above-entitled proceedings, doth hereby appeal from the said orders to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said orders were made, duly authenticated, may be sent to the Supreme Court of the United States.

ALFRED A. MARCUS,
By his solicitors, ROBERT M. MORSE, JR,
RUSSELL C. OSTRANDER,
CHARLES E. HELLIER.

The foregoing claim of appeal is hereby allowed. If a supersedeas is intended, let the appeal bond be in the sum of $150,000.

H. F. SEVERENS, *Dist. Judge.*

Dated June 12, 1891.

466 (Endorsed:) No. 46. Equity. Mason *et als. vs.* Pewabic Co. *et als.* Claim of appeal of Alfred A. Marcus. Filed Sept. 22, 1891. F. M. Moore, dep. clerk. Robert M. Morse, J-., Russell C. Ostrander, Charles E. Hellier, solicitors for Alfred A. Marcus.

467 Circuit Court of the United States, Western District of Michigan. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden D. Buttrick, Daniel L. Demmon, The Pewabic Copper Company, and Alfred A. Marcus, Intervenor.

Bond.

Know all men by these presents that we, Alfred A. Marcus and Charles A. Prince, both of the city of Boston, in the county of Suffolk and State of Massachusetts, are held and stand firmly bound unto the above-named Thomas H. Mason, William Hart Smith, and Sullivan Ballou in the sum of two thousand ($2,000) dollars, to be paid to the said Thomas H. Mason, William Hart Smith, and Sullivan Bal-

lou; for the payment of which, well and truly to be made, we bind ourselves and each of us, all and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the eleventh day of September, 1891.

Whereas the above-named Alfred A. Marcus has presented an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit March 2, 1891, by the judge of the district court of the United States, sitting in the
468 circuit court of the United States for the western district of Michigan:

Now, therefore, the condition of this obligation is such that if the above-named Alfred A. Marcus shall prosecute said appeal to effect and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ALFRED A. MARCUS. [SEAL.]
CHARLES A. PRINCE. [SEAL.]

Signed, delivered, taken, and acknowledged this 11th day of September, 1891, before me—

FRED. W. BROWN,
[SEAL.] *Notary Public.*

(Endorsed:) Upon the request of R. C. Ostrander, of counsel for the appellant, I hereby approve the foregoing bond in form and substance, including the sufficiency of the surety, but not as a supersedeas, and without passing upon the validity or effect of such approval of a bond now tendered. Sept. 19th, 1891. H. F. Severens, dist. judge.

(Endorsed:) Circuit court of the United States, western district of Michigan. In equity. Thomas H. Mason, William Hart Smith, & Sullivan Ballou *vs.* The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, The Pewabic Copper Company, and Alfred A. Marcus, intervenor. Bond. Filed Sept. 22, 1891. F. M. Moore, dep. clerk.

469 Circuit Court of the United States, Western District of Michigan. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden D. Buttrick, Daniel L. Demmon, The Pewabic Copper Company, and Alfred A. Marcus, Intervenor.

Bond.

Know all men by these presents that we, Alfred A. Marcus and Charles A. Prince, both of the city of Boston, in the county of

Suffolk and State of Massachusetts, are held and stand firmly bound unto the above-named Thomas H. Mason, William Hart Smith, and Sullivan Ballou in the sum of two thousand ($2,000) dollars, to be paid to the said Thomas H. Mason, William Hart Smith, and Sullivan Ballou; for the payment of which, well and truly to be made, we bind ourselves and each of us, all and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the eleventh day of September, 1891.

Whereas the above-named Alfred A. Marcus has presented an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit April 27, 1891, by the judge of the district court of the United States, sitting in the circuit court of the United States for the western district of Michigan:

Now, therefore, the condition of this obligation is such that if the above-named Alfred A. Marcus shall prosecute said appeal to
470 effect and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ALFRED A. MARCUS. [SEAL.]
CHARLES A. PRINCE. [SEAL.]

Signed, delivered, taken, and acknowledged this 11th day of September, 1891, before me—

FRED. W. BROWN,
[SEAL.] *Notary Public.*

471 Circuit Court of the United States, Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON *et al.*
v.
THE PEWABIC MINING COMPANY *et als.*

And now come the following defendants in said suit, to wit, Johnson Vivian, Daniel L. Demmon, Thomas H. Perkins, and The Pewabic Copper Company, and say that an appeal from an order or decree of said court of March 2, 1891, confirming the sale made on January 24, in the same year, of the property of their codefendant, The Pewabic Mining Company, so far as taken the same in behalf of the defendants who now come before the court, was taken through a misapprehension on the part of their counsel of their wishes in this matter; that these defendants have no intention of prosecuting or even of perfecting said appeal, and that they ask leave to file this writing in withdrawal of and to vacate the same.

JOHNSON VIVIAN,
DANIEL L. DEMMON,
THOMAS H. PERKINS, AND
THE PEWABIC COPPER COMPANY,
By THOMAS H. TALBOT,
Their Attorney & Counsel.

(Endorsed:) Circuit court of the United States, western district of Michigan, northern division. In equity. Thomas H. Mason *et als. vs.* The Pewabic Mining Co. *et als.* Statement of certain parties that they will not perfect appeal with Pewabic Mining Company. Filed Sept. 25th, 1891. F. M. Moore, dep. clerk.

472 THE UNITED STATES OF AMERICA:

In Equity.

To Thomas H. Mason and William Hart Smith, partners, doing business under the firm name of Mason & Smith, and Sullivan Ballou, all of the city, county, and State of New York, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to an appeal claimed by Alfred A. Marcus, intervener, and allowed by the circuit court of the United States for the western district of Michigan, northern division thereof, in a cause in equity wherein you are complainants and The Pewabic Mining Company, Daniel L. Demmon, Alden D. Buttrick, Johnson Vivian, Henry Billings, Thomas H. Perkins, and The Pewabic Copper Company are defendants, to show cause, if any there be, why the decretal order made in said cause by said court on the 2nd day of March, 1891, upon the hearing of the application of the said intervener should not be reversed and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable H. F. Severens, district judge of the United States, this 19th day of September, A. D. 1891.

H. F. SEVERENS,
U. S. Dist. Judge.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Fred. A. Baker, being duly sworn, deposes and says that on the 26th day of September, 1891, he served a citation, of which the within is a true copy, on Dickinson, Thurber & Stevenson, solicitors for said complainants, by delivering the same to Don M. Dickinson, one of the members of said firm of solicitors, in person, at the city of Detroit, in said district.

FRED. A. BAKER.

Subscribed and sworn to before me this 28th day of Sept., 1891.

ERVIN PALMER,
U. S. Commissioner, East. Dist. of Mich.

(Endorsed:) No. 46. Circuit court of U. S., western district of Mich., nor. division. In equity. Thomas H. Mason *et als. vs.* Pewabic Mining Co. *et als.* Proof of service of citation. Filed Sept. 29th, 1891. F. M. Moore, deputy clerk. R. C. Ostrander, solicitor for def'ts.

473 THE UNITED STATES OF AMERICA:

In Equity.

To Thomas H. Mason and William Hart Smith, partners, doing business under the firm name of Mason & Smith, and Sullivan Ballou, all of the city, county, and State of New York, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to an appeal claimed by Alfred A. Marcus, intervener, and allowed by the circuit court of the United States for the western district of Michigan, northern division thereof, in a cause in equity wherein you are complainants and The Pebabic Mining Company, Daniel L. Demmon, Alden D. Buttrick, Johnson Vivian, Henry Billings, Thomas H. Perkins, and The Pewabic Copper Company are defendants, to show cause, if any there be, why the decretal order made in said cause by said court on the 27th day of April, A. D. 1891, upon the hearing of the application of the said intervener should not be reversed and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable H. F. Severens, district judge of the United States, this 19th day of September, A. D. 1891.

H. F. SEVERENS,
U. S. Dist. Judge.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Fred. A. Baker, being duly sworn, deposes and says that on the 26th day of September, 1891, he served a citation, of which the within is a true copy, on Dickinson, Thurber & Stevenson, solicitors for said complainants, by delivering the same to Don M. Dickinson, one of the members of said firm of solicitors, in person, at the city of Detroit, in said district.

FRED. A. BAKER.

Subscribed and sworn to before me this 28th day of Sept., 1891.

ERVIN PALMER,
U. S. Commissioner, East. Dist. of Mich.

(Endorsed:) No. 46. Circuit court of U. S., western district of Mich., nor. division. In equity. Thomas H. Mason *et als. vs.* Pewabic Mining Co. *et als.* Proof of service of citation. Filed Sept. 29th, 1891. F. M. Moore, deputy clerk. R. C. Ostrander, solicitor for def'ts.

474 Circuit Court of the United States, Western District of Michigan, Northern Division. In Equity.

Circuit Court of the United States, Western District of Michigan, Northern Division, *ss:* In Equity.

I, Charles L. Fitch, clerk of the circuit court for the western district of Michigan, do hereby certify the above and foregoing to be true copies of the records, files, papers, and proceedings on file and

of record in the case of Thomas H. Mason, William Hart Smith, and Sullivan Ballou, complainants, against The Pewabic Mining Company, The Pewabic Copper Company, Johnson Vivian, Henry Billings, Henry H. Perkins, Alden D. Buttrick, and Daniel L. Demmon, defendants, in said court, and of the bonds on appeal therein filed and of the citations and proof of service thereof therein filed since and including the mandate of the Supreme Court of the United States therein, including all records, files, papers, and proceedings on the application of Alfred A. Marcus to intervene in said proceedings; that I have compared the same with the originals thereof of record, excepting only that I have omitted to return copies of the notices of sale published by the special master and proof of publication thereof and have omitted also notices of the postponement of sale made by the special master and proof of publication thereof, I having been advised by counsel for appellant that these omitted papers were not necessary to the determination of any of the questions raised on this appeal.

475 I further certify that I have compared all copies of papers herewith with the originals thereof of record and on file in my office, and that the same are true copies thereof and of the whole thereof.

In witness whereof I have hereunto set my hand and seal of said court, at Marquette, this 29th day of September, A. D. 1891.

{ Seal of the U. S. Circuit Court, Western District of Mich., Northern Division. }

CHARLES L. FITCH, *Clerk*,
By F. M. MOORE, *Deputy*.

476 Supreme Court of the United States, October Term, 1891.

PEWABIC MINING COMPANY, Appellant,
vs.
THOMAS H. MASON *et als.*, Appellees. } No. 1340.

SAME
vs.
SAME.

ALFRED A. MARCUS, Appellant,
vs.
THOMAS H. MASON *et als.* Appellees. } No. 1416.

SAME
vs.
SAME.

It is agreed that in the above-entitled actions but one record may be printed for all four appeals.

THOMAS H. TALBOT,
ROBERT M. MORSE,
Of Counsel for Appellants.
DON M. DICKINSON,
ALFRED RUSSELL,
Counsel for Appellees.

Of course, the record as printed is to conform to our designation of what to print, as per notice served and filed.

A. R.
D. M. D.

477 [Endorsed:] Supreme Court U. S. 1891, October term. No. 1340 & 1416. The Pewabic Mining Co., app't, *vs.* Thos. H. Mason & *al.* & Marcus *vs.* Same. Stipulation as to printing record. Filed Jan'y 23, 1892.

Endorsed on cover: Case No. 14,814. W. Michigan C. C. U. S. No. 1340. The Pewabic Mining Company, appellant, *vs.* Thomas H. Mason, William Hart Smith, and Sullivan Ballou. Filed August 21, 1891.

Office Supreme Court U. S.
FILED,
NOV 20 1891
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1891.

THE PEWABIC MINING CO.,
vs.
THOMAS HENRY MASON,
WILLIAM HART SMITH, and
SULLIVAN BALLOU.

SAME,
vs.
SAME.

ALFRED A. MARCUS,
vs.
SAME.

Nos. 1340 and 1416.

Three appeals from two different orders in the same cause, in equity, from the Circuit Court of the United States for the Western District of Michigan.

On motions to vacate the *supersedeas* on one appeal, and also to dismiss the same (that from the order confirming the sale under the mandate of this Court); and to dismiss the other two appeals (from the order refusing the petition of one *Marcus* to open the biddings), both orders in the same cause.

ADDITIONAL PARTS OF RECORD.

(Appellants' counsel, being served with printed copies of the motions, brief and parts of transcripts, which printed copies had been filed, objected in writing, that enough of the record had not been printed, and made specific reference to 23 portions of the record which they they thought should be supplied.)

DON M. DICKINSON,
ALFRED RUSSELL,
For Appellees.

John F. Eby & Co., Printers, Detroit, Mich.

Supreme Court of the United States.

OCTOBER TERM, 1891.

THE PEWABIC MINING CO.,
vs.
THOMAS HENRY MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU.
SAME vs. SAME.
ALFRED A. MARCUS vs. SAME.
Nos. 1340 and 1416.

Three appeals from two different orders in the same cause, in equity, from the Circuit Court of the United States for the Western District of Michigan.

On motions to vacate the *supersedeas* on one appeal, and also to dismiss the same (that from the order confirming the sale under the mandate of this Court); and to dismiss the other two appeals (from the order refusing the petition of one *Marcus* to open the biddings), both orders in the same cause.

ADDITIONAL PARTS OF RECORD.

(Appellants' counsel, being served with printed copies of the motions, brief and parts of transcripts, which printed copies had been filed, objected in writing, that enough of the record had not been printed, and made specific reference to 23 portions of the record which they thought should be supplied.)

The following is the written list demanded :

1. Order of March 2, 1891, overruling exceptions and confirming sale of January 24, 1891 (your I, p. 5, already printed).

2. Petition of Alfred A. Marcus, filed March 3, 1891, to be allowed to intervene to object that sale to Mason & Smith be set aside and sale made to Marcus (p 4).

3. Claim of appeal by the defendants, filed March 10, 1891 (allowed March 17, 1891, see recital of April 30, 1891) (p. 8).

4. Petition of Alfred A. Marcus, filed March 11, 1891, that he may be allowed to intervene and buy, that sale be set aside, and that the property be offered for sale (p. 9).

5. Order of notice on last petition, filed March 13, 1891 (p. 13).

6. Affidavit of Horace C. Foote, of service of above order of notice on Mason & Smith, dated March 16, 1891 (p. 14).

7. Motion of Pewabic Company to vacate and set aside the sale of April 22, 1891 (p. 15).

8 A. Affidavit of F. V. Parker (p. 17).
8 B. Affidavit of I. A. Evans (p. 18).
8 C. Affidavit of C. H. Allen (p. 18.)
8 D. Affidavit of B. S. Evans (p. 19).
8 E. Affidavit of H. S. Crowell (p. 20).
8 F. Affidavit of C. O. Billings (p. 21).
8 G. Affidavit of C. A. Prince (2) (p. 21).
8 H. Affidavit of R. E. Demmon (p. 24).
8 I. Affidavit of E. E. Pratt (p. 25).
8 J. Affidavit of D. L. Demmon (p. 26).
8 K. Affidavit of A. R. Whittier (p. 27).
8 L. Affidavit of F. G. Storey (p. 28).
8 M. Affidavit of Walter R. Dyer (p. 28).
8 N. Affidavit of L. L. Fuller (p. 29).

Filed April 27, 1891.

9. Agreement to give $800,000, filed April 27, 1891 (p. 30).

10. Circular to Quincy Mining Company stockholders, filed April 27, 1891 (p. 31).

11. Offer to wire $80,000, filed April 27, 1891 (p. 32).

12. Offer to wire $90,000, filed April 27, 1891 (p. 32).

13. Indenture of conveyance, Peter White to Thomas H. Mason and William Hart Smith, made March 25, 1891, filed April 27, 1891 (p. 33).

14. Indenture of conveyance, Thomas H. Mason and William Hart Smith to Quincy Mining Company, made March 28, 1891, filed April 27, 1891 (p. 46).

15. Order denying application of the Pewabic Company, filed April 27, 1891 (p. 59).

16. Order denying Marcus' petition, filed April 27, 1891 (see your II, p. 6, already printed).

17. Order that penalty of *supersedeas* bond be $200,000, filed April 30, 1891 (p. 60).

18. Appeals (two) claimed by the Pewabic Company June 3, 1891, and request to fix penalty of *supersedeas* bond (see your III, pp. 8, 9) pp. 62, 63, 64).

19. Notice to opposing party of the same (p. 65).

20. Requests for allowance of appeals claimed and allowance, with fixing of penalty of bonds at $150,000 (pp. 66, 67).

21. *Supersedeas* bond on appeal, filed March 10, 1891, of all living defendants from decree of March 2, 1891, and approval (see your IV, pp. 9, 10, already printed).

22. *Supersedeas* bond on appeal, filed June 3, 1891, of Pewabic Mining Company from order of April 27, denying petition of Pewabic Company (see your X, pp. 20, 21, 22, already printed).

23. Citations on *supersedeas* bond (pp. 67, 68).

(*Affidavit, certificate, supplemental brief and notice of hearing follow 23.*)

II.

PETITION OF ALFRED A. MARCUS FOR LEAVE TO INTERVENE.

And now comes Alfred A. Marcus, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, and says that he is the owner of 3,017 shares of the capital stock of the Pewabic Mining Company. That he, for himself and other parties, whose names he is willing to disclose, was desirous and fully intended to be present or represented at the sale of the property of the said Pewabic Mining Company by the Special Master duly appointed by this Honorable Court in the above entitled cause; that he was ready to and would have bid at said sale and paid a large amount of money for the property of said company advertised for sale by said Special Master.

That on January 23, 1891, that being the day before the sale of said property took place, your petitioner discovered, for the first time, that the said sale was advertised for Saturday, January 24; that thereupon and immediately your petitioner, using all haste and dispatch possible, sent by telegraph a message to the said Special Master, a copy whereof is hereto annexed, marked A, asking to have the sale of said property postponed, at his own expense, for the reason that he was never notified of the sale until said date, and that said sale was advertised to take place on the seventh day of the week, which is the Sabbath of your petitioner, and upon which day he is forbidden by his creed to do any business.

That the Special Master received the message of your

petitioner, but ignored it, and sold said property for an inadequate sum, and for much less than it was worth. That on January 26, 1891, your petitioner sent, by telegraph, a message, a copy whereof is hereto annexed, marked B, to said Special Master claiming the right to bid $721,000 for the property sold at said sale, which message was duly received by said Special Master; that the said Special Master, in his report of said sale, dated February 3, 1891, acknowledged the receipt of the above mentioned telegraph messages from your petitioner, but said he paid no attention whatever to them, deeming them frivolous.

And your petitioner further says that his said offer in his said telegram of January 26, was *bona fide*, and that he was on said date and is now able and desirous of taking the said property at the price named in his said offer, and that he was the highest bidder for said property advertised, and as such is in accordance with the decree of the Court entitled to have his bid accepted and to receive the said property upon payment of the said sum bid within a reasonable time.

And your petitioner further says that he is willing and hereby offers to give bonds with satisfactory securities to perform in accordance with this, his petition.

Wherefore, your petitioner prays—

1. That he may be allowed to intervene in said cause and object to the report of sale of the Special Master bearing date February 3, 1891.

2. That the said sale of the property of the Pewabic Mining Company, made on January 24, 1891, be declared void and set aside, and the Special Master be ordered to convey to the petitioner, as highest bidder, said property, upon his paying, within a reasonable time, the said sum of $721,000.

ALFRED A. MARCUS.

UNITED STATES OF AMERICA, } ss.
Massachusetts District. }

BOSTON, February 26, 1891.

Personally appeared Alfred A. Marcus, the foregoing petitioner, and made oath that he has read the foregoing petition, and that the same is true, except as to those matters therein stated upon his information and belief, and that as to those matters he believes it to be true.

Before me,

JOHN G. STETSON,
Court Commissioner.

[SEAL U. S. COURT.]

EXHIBIT A.

BOSTON, MASS, January 23, 1891.

To Peter White, Special Master:

Please postpone sale of Pewabic Mine. Just found out the sale on our Jewish Sabbath. Never notified of sale until to-day. We hold nearly three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers who will not attend sale on Saturday. Will most cheerfully pay all expenses for postponement. If not, please announce at sale, "we will protest against this legality."

[Signed] ALFRED A. MARCUS.

EXHIBIT B.

BOSTON, MASS., January 26, 1891.

To Peter White, Special Master:

You ignored my dispatch, sold the Pewabic Mine. I protest against sale, as you were bound to do all to get the highest price. I claim the right now to bid seven hundred and twenty-one thousand dollars cash, being twenty thousand dollars more than bid at the illegal sale. I shall claim the mine, being the highest bidder, and protest against any transfer being made to any one except myself, and shall hold you personal responsible.

[Signed] ALFRED MARCUS.

No. 46. In Equity. [Indorsed.]

MASON *et al.*
vs.
PEWABIC MINING COMPANY *et al.*

Petition of Alfred A. Marcus to intervene.
Filed March 3, 1891. F. M. MOORE,
4 P. M. *Deputy Clerk.*

III.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION—IN EQUITY.

THOMAS H. MASON,
WILLIAM HART SMITH, and
SULLIVAN BALLOU,
Complainants,
vs.
THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
HENRY BILLINGS,
THOMAS H. PERKINS,
ALDEN B. BUTTRICK,
DANIEL L. DEMMON, and the
PEWABIC COPPER COMPANY,
Defendants.

And now comes the said defendants, The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins and Daniel L. Demmon, and hereby claim the benefit of an appeal to the Supreme Court of the United States from the order made in said cause by said Court, on the second day of March, 1891, confirming the sale made by the Special Master, on the twenty-fourth day of January, 1891, and from the said Special Master's report of said sale.

Dated the 9th day of March, A. D. 1891.

STONE & GRAY,
Solicitors for said Defendants.

RUSSELL C. OSTRANDER,
Of Counsel

TO CHARLES L. FITCH, ESQ.,
Clerk of said Court.

[Indorsed.]

United States Circuit Court, Western District of Michigan, Northern Division—In Equity. *Thomas H. Mason et al. vs. The Pewabic Mining Co. et al.*

Claim of appeal.

Filed March 10, 1891.

STONE & GRAY,
Solicitors for Defendants.

F. M. MOORE,
Deputy Clerk.

IV.

CIRCUIT COURT OF THE UNITED STATES—WESTERN DISTRICT OF MICHIGAN—IN EQUITY.

MASON *et al.*
vs.
PEWABIC MINING COMPANY *et al.*

PETITION OF ALFRED A. MARCUS FOR LEAVE TO INTERVENE.

And now comes Alfred A. Marcus, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, and says that he is the owner of 3,000 shares of the capital stock of the Pewabic Mining Company. That he, for himself and other parties whose names he is willing to disclose, was desirous and fully intended to be present or represented at the sale of the property of the Pewabic Mining Company by the Special Master duly appointed by this Honorable Court in the above entitled cause; that he was ready to and would have bid at said sale and paid a large amount of money for the property of said company adver-

tised for sale by said Special Master. That on January 23, 1891, that being the day before the sale of said property took place your petitioner discovered for the first time that the said sale was advertised for Saturday, January 24; that thereupon and immediately your petitioner using all haste and dispatch possible, sent by telegraph a message to the said Special Master, a copy whereof he hereto annexed marked "A" asking to have the sale of said property postponed, at his own expense, for the reason that he was never notified of the sale until said date, and that said sale was advertised to take place on the seventh day of the week, which is the Sabbath of your petitioner, and upon which day he is forbidden by his creed to do any business.

That the Special Master received the message of your petitioner but ignored it and sold said property for an inadequate sum, and for much less than it was worth. Then on January 26, 1891, your petitioner sent by telegraph a message, a copy whereof is hereto annexed marked "B," to said Special Master claiming the right to bid $721,000 for the property sold at said sale, which message was duly received by said Special Master; that the said Special Master in his report of said sale dated February 3, 1891, acknowledged the receipt of the above mentioned telegraph messages from your petitioner but said he paid no attention whatever to them, deeming them frivolous.

And your petitioner further says that his said offer in his said telegram of January 26 was *bona fide*, and that he was on said date and is now able and desirous of taking the said property at the price named in his said offer.

And your petitioner says that he is in equity entitled to have said sale set aside and declared null and void, and to have a resale of said property in manner decreed by this

Honorable Court; and your petitioner says that he is willing and ready to pay all expenses incident to such resale of said property; that he will bid at such sale as a starting bid a sum not less than $800,000; and your petitioner hereby offers to give a bond with satisfactory sureties in a sum to be fixed by this Honorable Court as security for his good faith and ability to carry out his said offer to bid $800,000 at said sale.

Wherefore your petitioner prays:

1. That he may be allowed to intervene in said cause and object to the report of sale of the Special Master in said case; said report bearing date of February 3, 1891.

2. That said sale of the property of the Pewabic Mining Company made on January 24, 1891, be declared null and void and be set aside by this Honorable Court.

3. That said Special Master be ordered to offer said property for sale in the manner decreed by this Honorable Court, at the expense of your petitioner.

ALFRED A. MARCUS.

C. E. HELLIER,
of Counsel for Petitioner.

Pesonally appeared the above signed Alfred A. Marcus and made oath in due form to the truth of the statement by him signed.

Before me,

[SEAL] HENRY L. HALLETT,
U. S. Commissioner, Mass. Dist.

EXHIBIT A.

BOSTON, MASS., January 23, 1891.

To Peter White, Special Master:

Please postpone sale of Pewabic Mine, just found out the sale on our Jewish Sabbath. Never notified of sale until to-day.

We hold nearly three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers who will not attend sale on Saturday. Will most cheerfully pay all expenses for postponement. If not, please announce at sale, "we will protest against this legality."

(Signed) ALFRED A. MARCUS.

EXHIBIT B.

BOSTON, MASS., January 26, 1891.

To Peter White, Special Master.

You ignored my dispatch, sold the Pewabic Mine. I protest against sale as you were bound to do all to get the highest price. I claim the right now to bid seven hundred and twenty-one thousand dollars cash, being twenty thousand dollars more than bid at the illegal sale. I shall claim the mine being the highest bidder, and protest against any transfer being made to any one except myself, and shall hold you personal responsible.

(Signed) ALFRED MARCUS.

[Indorsed.]

The Circuit Court of the United States for the Western District of Michigan, Northern Division—In Equity. Thomas H. Mason *et al.* vs. Pewabic Mining Co. *et al.* Petition of Alfred A. Marcus for leave to intervene.

Filed March 11, 1891.

C. L. FITCH,
Clerk.

V.

Suit pending in said Court, in said district, on the 11th day of March, A. D. 1891. Present, Hon. Henry F. Severens, District Judge. At Chambers.

On reading the petition of Alfred A. Marcus, filed in the above entitled cause, ordered that the parties to said suit, complainants and defendants, and the purchaser at the Master's sale show cause to said Court, on Tuesday, March 24th inst., at the opening of Court on that day, why the prayer of said petitioner should not be granted.

Further ordered that a copy of said petition, and a copy of this order be served upon the solicitors for the respective parties, and upon said purchaser on or before March 17, 1891.

H. F. SEVERENS,
District Judge.

[Indorsed.]

Circuit Court of the United States for the Western District of Michigan, Northern Division—In Equity. *Thomas H. Mason et al. vs. Pewabic Mining Company et al.*

Order to show cause.

Filed March 13th, 1891.

C. L. FITCH,
Clerk.

VI.

STATE OF NEW YORK, City and County of New York. } ss.

Horace C. Foote, residing at No. 53 West 82d street, in the said city of New York, being duly sworn, says: That he is more than twenty-one years of age, and that at the instance and request of Messrs. Cahill & Ostrander, solicitors for the petitioner in the annexed petition, he did on the 16th day of March, 1891, at No. 52 Broadway, in the said city of New York, the place of business of Thomas H. Mason and William Hart Smith, serve the annexed notice, petition, and order personally on the above named Thomas H. Mason and William Hart Smith, complainants herein respectively by delivering copies of the said notice, petition, and order to each of them personally, and leaving the same with each of them; and deponent further says that he knows the said persons so served to be respectively the persons of the said names mentioned and described in said notice, petition and order as complainants herein.

HORACE C. FOOTE.

Sworn to before me this 16th day of March, 1891.

JAMES R. SHEFFIELD,
Notary Public.
[SEAL.] New York County.

VII.

UNITED STATES OF AMERICA.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION—IN EQUITY.

THOMAS H. MASON,
WILLIAM HART SMITH,
SULLIVAN BALLOU,

vs.

THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
HENRY BILLINGS,
THOMAS H. PERKINS,
ALDEN D. BUTTRICK,
DANIEL L. DEMMON, and
THE PEWABIC COPPER COMPANY.

To Messrs. Dickinson, Thurber & Stevenson, Solicitors for Complainants and for Purchasers at sale:

GENTS—You will please take notice that on Monday, the 27th day of April, 1891, at the opening of court, before the Honorable H. F. Severens, District Judge, at the court room in the federal building in Grand Rapids, the above named defendant, the Pewabic Mining Company, by F. A. Baker, its solicitor, will move the court to vacate and set aside the sale of the mining property of said defendant, made by Peter White, Special Master, as appears by his

report of sale of record in this cause, and to order a re-sale of said property by said Special Master for the following reasons:

1st. The court having entertained and made an order to show cause upon the petition of Alfred A. Marcus to intervene in this cause, and for a re-sale, the said sale so made and report by the Special Master has not been finally confirmed, and the question whether it shall be finally confirmed is still open.

2d. It appears from the petition of said Alfred A. Marcus that said property did not bring the highest price for which it can be sold within about $90,000 and upwards, and that if said property is re-sold it will bring not less than $800,000.

3d. It appears by said report or sale that Thomas H. Mason and William Hart Smith, two of the complainants in this cause, were permitted, without permission of the court, to bid on said property and become the purchasers thereof, and the sale to them is illegal and void.

4th. It appears by the files and records of this case that said sale was prematurely made, before the debts and assets of the Pewabic Mining Company had been fully ascertained and determined, and before there had been any accounting with the defendant directors, as required by the decision and mandate of the Supreme Court of the United States.

Said motion will be based upon the files and records in this cause and the petition of said Alfred A. Marcus and the affidavits and proofs filed in support thereof.

DETROIT, April 22, 1891.

F. A. BAKER,
Solicitor Pewabic Mining Company.

[Indorsed.]

United States of America. Circuit Court of the United States, Western District of Michigan, Northern Division—In Equity. *Thomas H. Mason et al. vs. Pewabic Mining Company et al.*

Motion to set aside sale.

Filed April 27, 1891.

C. L. FITCH, *Clerk.*

F. A. BAKER,
Solicitor Pewabic Mining Company.

VIII.

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

I, Francis V. Parker, of Boston, in said county, on oath, say that I have subscribed my name to a letter dated April 1, 1881, to R. M. Morse, jr., in reference to the purchase of the property of the Pewabic Mining Company; that I am a stockholder, and am worth above all my liabilities at least $150,000, and am able to respond, and will respond, to any obligation which may be incurred by me on account of said purchase, and that I will furnish the sum of $112,500 towards the sum of $900,000, which I hereby agree may be paid at a re-sale of said property.

FRANCIS V. PARKER.

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

BOSTON, April 6, 1891.

Then personally appeared Francis V. Parker, to me personally known, and made oath that the above statement made, by him subscribed, is true.

Before me, FRED W. BROWN,
Notary Public.

[Notarial Seal.]

VIII A.

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

I, Irving A. Evans, of Boston, in said county, on oath, say that I have subscribed my name to a letter dated April 1, 1891, to R. M. Morse, jr., in reference to the purchase of the property of the Pewabic Mining Company; that I am the senior member of the firm of Irving A. Evans & Company, of Boston, stock brokers, and am able to respond, and will respond, to any obligation which may be incurred by me on account of said purchase, and that I will furnish the sum of $112,500 towards the sum of $900,000, which I hereby agree may be paid at a resale of said property.

IRVING A. EVANS.

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

BOSTON, April 6, 1891.

Then personally appeared Irving A. Evans, to me personally known, and made oath that the above statement by him subscribed is true.

Before me, FRED. W. BROWN,
Notary Public.

VIII B.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, Charles H. Allen, of Boston, in said county, do on oath declare and say that I am president of the Central National Bank of Boston, and of the Home Savings Bank; that I have known Alfred A. Marcus of said Boston for

many years, and have had large and continued business dealings with him; that since I became President of the Home Savings Bank, Mr. Marcus purchased from the Savings Bank upwards of $250,000 worth of real estate; that said Marcus has for several years past kept an account at the Central National Bank, and has been in the banking rooms of said Central Bank nearly every day; but that during the time that he has had an account in said bank, he has never been in the bank on Saturday; that I know Mr. Marcus to be an orthodox Jew with conscientious scruples with regard to the strict observance of his Sabbath.

CHARLES H. ALLEN.

Subscribed and sworn to this third day of April, 1891, before me,

CLARENCE F. ELDREDGE,
Notary Public, Suffolk County, Massachusetts.

VIII C.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, Brice S. Evans, of Boston, in said county, on oath, do declare and say that I am an agent and large dealer in real estate in said Boston, and have been for many years, and that I am familiar with real estate transactions in said Boston; that I have known Alfred A. Marcus, of said Boston, for many years, and have had business dealings with him; that said Marcus' real estate transactions have been very large since I have known him for nearly twenty years last past.

I do further say and declare, that I believe said Marcus to be an orthodox Jew, and that he, to my knowledge, has never transacted any business whatever on the seventh day

of the week, which is the Jewish Sabbath; that he for many years had an office adjacent to mine, and that I never saw him at his place of business on the seventh day of the week, and that I would have seen him had he been at his place of business on said day; and further that I would never hold a sale of any piece of property in which I thought said Marcus was interested on Saturday.

BRICE S. EVANS.

Subscribed and sworn to this thirteenth day of March, 1891, before me,

[SEAL] HENTY L. MITCHELL,
Notary Public.

VIII D.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, Horace S. Crowell, of Boston, in said county, do on oath depose and say that I am an auctioneer and dealer in real estate; that I have known Mr. Alfred A. Marcus, of said Boston, for many years, and have had many large business transactions with him; that I have found him to be an orthodox Jew, with conscientious scruples in regard to the strict observance of Saturday, which is his Sabbath, and never have seen him upon that day; that I would never hold a sale of any piece of real estate in which I thought said Marcus was interested upon Saturday.

HORACE S. CROWELL.

Name "Marcus" rewritten before signing.

Subscribed and sworn to this twenty-seventh day of March, 1891, before me.

[SEAL.] CLARENCE F. ELDREDGE,
Notary Public for Suffolk County, Massachusetts.
My commission expires May 1, 1891.

VIII E.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, Charles O. Billings, of Boston, in said county, on oath do declare and say that I have known Alfred A. Marcus, of said Boston, for many years; that said Marcus is a large dealer in real estate in said Boston, and has had large business transactions with many of the leading capitalists in said city.

I do further say and declare that I believe said Marcus to be an orthodox Jew, and that he, to my knowledge, has never transacted any business on the seventh day of the week, the Jewish Sabbath.

CHARLES O. BILLINGS.

Subscribed and sworn to this third day of April, 1891, before me.

[SEAL] CLARENCE F. ELDREDGE,
Notary Public for Suffolk County, Massachusetts.

VIII F.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, Charles A. Prince of Boston, in said county, on oath say, that I have subscribed my name to a letter dated April 1, 1891, to R. M. Morse, Jr., in reference to the purchase of the property of the Pewabic Mining Company; that I am a director and the general counsel of the New York & New England Railroad, and am worth, above all my liabilities, at least $250,000, and am able to respond and will respond to

any obligation which may be incurred by me on account of said purchase; and I will furnish the sum of two hundred and twenty-five thousand dollars towards the sum of $900,000, which I hereby agree may be paid at a re-sale of said property.

I further say that I have made and do make this agreement to furnish this amount towards the purchase of said property at the request of Alfred A. Marcus; that I personally took no action in respect to the petition of said Marcus, and had no knowledge of the same until after it had been filed, and the order of notice issued thereon; that said Marcus, to my knowledge, has actively engaged in securing the support necessary to fulfill his offer to bid $800,000 as a starting bid at a resale of said property.

CHARLES A. PRINCE.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

BOSTON, April 6, 1891.

Then personally appeared Charles A. Prince, to me personally known, and made oath that the above affidavit by him subscribed is true. Before me,

FRED. W. BROWN,
Notary Public.

[SEAL.]

VIII G.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, Charles Albert Prince, of Manchester, Mass., on oath depose and say that J. Otis Wetherbee, one of the subscribers to an agreement hereto attached, marked "A," in refer-

ence to the purchase of the property of the Pewabic Mining Company, is worth, to my own knowledge, $250,000 over and above all liabilities, and is perfectly able to respond to any and all liabilities and obligations he may incur by reason of said agreement.

I further depose and say, that I have been unable to procure, in time, a proper affidavit from the said Wetherbee of the nature obtained from the other subscribers.

CHARLES A. PRINCE.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

BOSTON, April 9, 1891.

Then personally appeared Charles A. Prince, to me personally known, and made oath that the above statement by him subscribed is true. Before me,

FRED. W. BROWN,
[SEAL.] *Notary Public.*

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

WM. M. OLIN,
[SEAL.] *Secretary of the Commonwealth.*

BOSTON, April 1, 1891.

R. S. Morse, Jr., Esq., Counsel, Boston, Mass.:

DEAR SIR—We herewith agree that in case a resale of the property of the Pewabic Mining Company (so-called) is ordered by the Court, we will give for said property the sum of $800,000; and as an earnest thereof, pay into the Court $80,000 as an advance of 10 per cent. over the amount bid, and as a fund to cover the expense of the re-sale; and we further agree to go as sureties upon a bond

that a starting bid of eight hundred thousand dollars shall be made, or will furnish a bond satisfactory to the Court.

(Signed) IRVING A. EVANS.
DANIEL L. DEMMON.
CHARLES A. PRINCE.
E. E. PRATT.
J. O. WETHERBEE.
F. V. PARKER.

No. [Indorsed.] Equity.

CIRCUIT COURT OF THE UNITED STATES—WESTERN DISTRICT OF MICHIGAN.

MASON *et al.*
vs.
PEWABIC MINING COMPANY *et al.*

Petition of Alfred A. Marcus for leave to intervene.
Affidavit of Charles A. Prince.
Filed April 27, 1891. C. L. FITCH,
[SEAL.] *Clerk.*

VIII H.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, Reuben E. Demmon, of Boston, in said county, on oath do declare and say that I am the president of the Howard National Bank of Boston, and that I know Alfred A. Marcus, of said Boston, and have known him for many years; that I have had knowledge of his desire to bid at the auction sale of the property of the Pewabic Mining Company; that on Friday, January 23, 1891, said Alfred A. Marcus was in my office in the Howard National Bank in said Bos-

ton, and that I asked him whether he was going to bid at the sale of the said property on the following Saturday, January 24; that Mr. Marcus immediately replied that he fully intended to be present or represented at the sale of said property, and to bid upon the same; that he was unaware of the fact that the said property was to be sold on Saturday, January 24; that he appeared to be greatly surprised and disturbed by my announcement, and signified his intention to immediately take some steps to protect himself in the matter.

I do further say and declare that I believe said Alfred A. Marcus to be an orthodox Jew, and that he, to my knowledge, has never transacted any business whatever upon the seventh day of the week.

REUBEN E. DEMMON.

Subscribed and sworn to 30th day of March, 1891, before me,

[SEAL.] HOWARD D. NASH,
Notary Public.

VIII I.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, Edward E. Pratt, of Boston, in said county, on oath say that I have subscribed my name to a letter dated April 1, 1891, to R. M. Morse, Jr., in reference to the purchase of the property of the Pewabic Mining Company; that I am assistant treasurer of the Chicago, Burlington & Quincy Railroad Company, and am worth above all my liabilities at least $250,000, and am able to respond and will respond to any obligations which may be incurred by me on account of said purchase, and that I will furnish $225,000 towards

the sum of $900,000, which I hereby agree may be bid at a resale of said property.

I further say that I have made and do make this agreement to furnish this amount towards the purchase of said property at the request of Alfred A. Marcus.

E. E. PRATT.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

BOSTON, April 6, 1891.

Then personally appeared E. E. Pratt to me personally known, and made oath that the foregoing affidavit by him subscribed is true.

Before me, FRED W. BROWN,

[SEAL.] *Notary Public.*

VIII J.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, Daniel L. Demmon, of Boston, in said county, on oath say that I have subscribed my name to a letter dated April 1, 1891, to R. M. Morse, Jr., in reference to the purchase of the property of the Pewabic Mining Company; that I am the treasurer of the Franklin Mining Company, and am worth, above all my liabilities, at least two hundred and fifty thousand dollars, and am able to respond, and will respond, to any obligation which may be incurred by me on account of said purchase, and that I will furnish the sum of one hundred and twelve thousand five hundred dollars towards the sum of nine hundred thousand dollars, which I hereby agree may be bid at a resale of said property.

I further say that I have made and do make this agreement to furnish this amount towards the purchase of said property at the request of Alfred A. Marcus; that I per-

sonally have taken no action in respect to the petition of said Marcus, and that said Marcus, to my knowledge, has been actively engaged since he first learned of the sale of said property in securing support necessary to fulfill his offer.

DANIEL L. DEMMON.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

BOSTON, April 6, 1891.

Then personally appeared Daniel L. Demmon, to me personally known, and made oath that the foregoing statement by him subscribed is true.

Before me, FRED. W. BROWN,
[SEAL.] *Notary Public.*

VIII K.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, Albert R. Whittier, of Boston, in said county, do on oath declare and say, that I am a dealer in real estate in said Boston; that I have known Alfred A. Marcus for many years, and have had business dealings with him; that I have never seen him on Saturday, the seventh day of the week, which is the Jewish Sabbath, and know him to be an orthodox Jew who strictly refrains from doing any business whatever on Saturday.

ALBERT R. WHITTIER.

Subscribed and sworn to this twenty-seventh day of March, 1891, before me,
[SEAL.] CLARENCE F. ELDREDGE,
Notary Public for Suffolk County, Massachusetts.
My commission expires May 1, 1891.

VIII L.

COMMONWEALTH OF MASSACHUSETTS, Suffolk. } ss.

I, F. G. Storey, of Boston, on oath declare and say, that I am superintendent of the Security Safe Deposit Vaults in the Equitable Building of said Boston, and have been since 1882; since 1882, Alfred A. Marcus, of said Boston, has had a compartment in said safe deposit vaults, and has been in said vaults very frequently during said time; that I have never seen him at the vaults on Saturday, the seventh day of the week, although I have seen him almost daily on other days; that I know said Marcus to be an orthodox Jew with conscientious regard for the observance of his Sabbath.

F. G. STOREY.

Subscribed and sworn to this twenty-eighth day of March, 1891, before me,

[SEAL.] CHAS. ALLEN TABER,
Notary Public.

VIII M.

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

I, Walter R. Dyer, of Boston, in said county, on oath do say and declare, that I am a son of Micah Dyer, jr., of said Boston; that I for some years was engaged in the lumber business in Michigan and was a member of the State Legislature of Michigan; that I know of my father, Micah Dyer, jr., having had large real estate transactions with Alfred A.

Marcus, of said Boston; that said Marcus has often been at the office which I occupied jointly with my father, but never has been there on the seventh day of the week, the Jewish Sabbath.

And that I further say and declare that I believe said Marcus to be an orthodox Jew, who conscientiously observes the seventh day of the week as his Sabbath, and that he does no business whatever upon that day.

WALTER R. DYER.

Subscribed and sworn to this twenty-seventh day of March, 1891, before me,

[SEAL.] CLARENCE F. ELDREDGE,
Notary Public for Suffolk County, Massachusetts.
My commission expires May 1, 1891.

VIII N.

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

I, Lorin L. Fuller, of Boston, in said county, on oath, do declare and say that I have been mayor of the city of Malden, in the county of Middlesex, and have carried on a large building and real estate business in and about said Boston for many years; that I know Alfred A. Marcus, of said Boston, and have known him for many years, and have had large business dealings with him; that I believe him to be an orthodox Jew, and that he has, to my knowledge, never transacted any business whatever upon the seventh day of the week, which is the Jewish Sabbath; and that he has refused, to my knowledge, to do any business on the seventh day of the week; that I have known Mr. Marcus to be engaged in large transactions, especially in real estate; that he is well known as a business man in Boston, and has

had large business transactions with many of the principal capitalists of that city.

LORIN L. FULLER.

Subscribed and sworn to this twenty seventh day of March, 1891, before me,

[SEAL.] CLARENCE F. ELDREDGE,
Notary Public for Suffolk County, Massachusetts.
My commission expires May 1, 1891.

IX.

BOSTON, April 1, 1891.

R. M. Morse, Esq., Counsel, Boston, Mass.:

DEAR SIR—We herewith agree that, in case a resale of the property of the Pewabic Mining Company (so-called) is ordered by the court, we will give for said property the sum of $800,000; and, as an earnest thereof, pay into the court $80,000, as an advance of ten per cent. over and above the amount bid, and as a fund to cover the expenses of the resale; and we further agree to go as sureties upon a bond that a starting bid of eight hundred thousand dollars shall be made, or will furnish a bond satisfactory to the court.

IRVING A. EVANS.
DANIEL L. DEMMON.
CHARLES A. PRINCE.
E. E. PRATT.
J. O. WETHERBEE.
F. V. PARKER.

[Indorsed.]

No. 46. The Circuit Court of the United States for the Western District of Michigan, Northern Division—In Equity. *Thomas H. Mason et al. vs. Pewabic Mining Co. et al.*

Letter to R. M. Morse.

Filed April 27, 1891. C. L. FITCH,
[SEAL.] *Clerk.*

X.

OFFICE OF THE QUINCY MINING COMPANY.
52 Broadway, Room 70.

NEW YORK, February 26, 1891.

To the Stockholders:

Having in view the probability of the Pewabic property, which adjoins our mine on the north, being sold at auction, it was thought desirable at the stockholders' meeting, held June 5, 1889, to increase the capital from 40,000 shares to 50,000 shares, the additional 10,000 shares being intended to provide for the purchase of the Pewabic, should such opportunity arise.

At the meeting it was voted: "That the directors have power to order the 10,000 shares of increased stock, the whole or any part, to be issued at such times as they may desire, and to direct, by vote, how this increased stock shall be sold, used or appropriated for the benefit of the company."

The sale took place at Houghton, Michigan, January 24, last, and the property was sold to Messrs. Mason & Smith, of New York city, who bought for the object of transferring it to the Quincy Mining Company; and a directors' meeting was therefore promptly called to act upon the matter. The total cost, including all expenses of litigation, which Messrs. Mason & Smith had conducted, and which extended over a period of some seven years, was estimated about $800,000. After a full consideration by your board of directors, as there was not time to offer rights to stockholders, and it was impossible to realize promptly on the stock from open sale the amount of money needed, it was

unanimously voted to accept the offer of Messrs. Mason & Smith to transfer the property to the company, in consideration of the issue to them of the 10,000 shares of increased stock, upon the delivery of a satisfactory deed.

Your directors think this plan was the wisest and best that could, under the circumstances, have been adopted. With an increased capital of 25 per cent., we will acquire additional mining territory, that not only insures longer life, but is expected soon to enable us to increase our product fully 50 per cent., and at a cost, when all contemplated improvements are completed, that will compare favorably with that of any copper mine on Lake Superior. All of which it is hoped may meet the approval of the stockholders.

THOMAS F. MASON,
President.

XI AND XII.

NEW YORK AND NEW ENGLAND RAILROAD COMPANY.
Office of General Counsel.

CHAS. ALBERT PRINCE,
40 State Street. BOSTON, April 9, 1891.

Robert M. Morse, Jr., Esq.:

DEAR SIR—I am prepared for myself and associates, upon telegraphic advice from you that the Pewabic sale is re-opened, to wire the sum of ninety thousand dollars as an earnest of our intention to bid the sum of nine hundred thousand dollars at the proposed sale.

Very truly yours,
CHARLES A. PRINCE.

[Indorsed.]

No. 46. Circuit Court of the United States for the Western District of Michigan, Northern Division—In Equity. *Thomas H. Mason et al. vs. Pewabic Mining Co. et al.*

Filed April 27, 1891. C. L. Frech,
Clerk.

XIII.

DEED. WHITE, SPECIAL MASTER, TO MASON & SMITH, MARCH 25, 1891.

This Indenture, made the twenty-fifth (25th) day of March, in the year of our Lord one thousand eight hundred and ninety-one. Between Peter White, residing in the city and county of Marquette, Michigan, Special Master, duly appointed by decree of the Circuit Court of the United States, for the Western District of Michigan, Northern Division, in equity, in a cause therein depending between Thomas H. Mason, William Hart Smith and Sullivan Ballou, complainants, and the Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon and the Pewabic Copper Company, defendants, party of the first part, and Thomas Henry Mason and William Hart Smith, co-partners under the firm name of Mason & Smith, both residing in the city, county and State of New York, parties of the second part, witnesseth; *Whereas*, at a session of said court, in chancery, sitting at the court house, in the city and county of Marquette, in the State of Michigan, on the sixth day of May, in the year of our Lord one thousand eight hundred and ninety, it was, among other things,

ordered, adjudged and decreed by said Court, in the cause above entitled, and then pending therein, that the assets and property of the said Pewabic Mining Company be sold at public vendue for cash, to the highest bidder, in one body after giving the notice of said sale, required by law and the practice of said Court, and that said property be offered for sale at the front door of the Court House in the village of Houghton, in the county of Houghton and State of Michigan, by and under the directions of said Special Master.

And Whereas, the said party of the first part, to these presents, in pursuance of said order and decree, and also in pursuance of the further order of said Court, made and filed on the 25th day of October, A. D. 1890, and in pursuance of another order of said Court, made and dated on the 15th day of December, A. D. 1890, wherein the day of sale of said property was fixed for Saturday, the 24th day of January, A. D. 1891, at the front door of the Court House, in the village of Houghton, and county of Houghton, Michigan (said Court House being the place for holding the Circuit Court for said county of Houghton, and being within the Western District of Michigan, Northern Division), did on the 24th day of January, A. D. 1891, at ten o'clock in the forenoon, sell at public auction, at the front door of the Court House, in the village and county of Houghton, Michigan, aforesaid, the said premises hereinafter particularly described, having first given previous notice of the time and place of sale, as required by the orders and decrees as aforesaid, and the practice of said Court, at which sale the premises were struck off to the said parties of the second part, to these presents, for the sum of seven hundred and ten thousand dollars ($710,000),

that being the highest sum bidden for the same, and they being the highest bidder therefor.

And Whereas, On the day of February, A. D. 1891, said party of the first part duly filed in said Court a report of said sale, and all his doings thereat, as such Special Master, and forthwith caused copies thereof to be served upon all of the solicitors for the defendants above named, and also on the solicitors for the complainants.

And Whereas, Said sale and said report of sale were by said Court at Chambers in all respects confirmed on the 2d day of March, A. D. 1891, as by reference to said order of confirmation, on file in the office of the clerk of said Court, will more fully appear.

Now therefore, this Indenture Witnesseth, That said Peter White, Special Master as aforesaid, and the party of the first part, to it, these presents, in order to carry into effect the said sale, so made as aforesaid in pursuance of said decree and orders of said Court, and in the consideration of the premises and of the sum of seven hundred and ten thousand dollars ($710,000), paid by the said parties of the second part to these presents, to the said party of the first part hereto, in manner following, to wit, seventy-one thousand dollars ($71,000) at the time said premises were so bidden off as aforesaid, to said parties of the second part, and the further sum of six hundred and thirty-nine thousand dollars ($639,000) at the date of the delivery of these presents, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey and confirm unto the said parties of the second part, and to their successors and assigns forever, all the following lands and premises, situate

in the county of Houghton, and State of Michigan, to wit, all the following described real estate, together with all and singular the houses, buildings, stamp mill, mining plant, engines, machinery, pumps, rolling stock, mining supplies thereon and therein and belonging thereto, and all mining rights connected therewith, including the stamp mill plant, with its pumps and buildings, the water front of the stamp mill on Portage Lake or river, eighty-nine (89) dwellings, and nine buildings and shops, and entire mining equipment of the Pewabic Mining Company, said real estate and real interests being as follows, to wit:

1st. The northwest quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west.

2d. The northeast quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, saving, excepting and reserving from said northeast quarter, as heretofore reserved in a conveyance to said Pewabic Mining Company by August Coburn and wife, five (5) acres in said section twenty-five (25), which said (5) acres is in a square form, with sides of equal length on the north and west lines of said quarter section, excepting, also, a lot leased to William Teek, September 1st, 1866, the lease of the same being for twenty-five (25) years, recorded in liber one of miscellaneous records, page 240, of record in the office of the register of deeds of Houghton county, Michigan, described as follows:

Lot No.....in the subdivision of the northeast quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, excepting and reserving also from said northeast quarter a tract leased to Isaac Jones, July 1st, 1868, the lease of the same being for twenty-five (25) years, recorded in liber 1 of miscellaneous records,

page 487, in the office of the register of deeds of said county, described as follows:

The lot in the subdivision of the northeast quarter of section twenty-five (25) in township fifty-five (55) north, of range thirty-four (34) west, lands belonging to the Pewabic Mining Company.

3. Also the southwest quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, saving and excepting from said southwest quarter a certain parcel of land, conveyed in a deed by the said Pewabic Mining Company to the Franklin Mining Company, the deed bearing date the 21st day of August, 1864, recorded in said register's office of said county, in liber 5 of deeds, on page 43, described as follows:

Beginning at a point on the section line between said sections twenty-five and thirty-six (36) four hundred and twenty-two (422) feet eight inches (8) easterly from the northeast corner of lands owned by the Detroit and Lake Superior Copper Company; thence north nineteen (19) degrees twenty-three (23) minutes east, eighty-nine (89) feet nine (9) inches; thence at right angles southeasterly sixty (60) feet; thence south nineteen (19) degrees twenty-three (23) minutes west, sixty-eight (68) feet eight (8) inches to said line, between section twenty-five (25) and thirty-six (36); and thence west on said line sixty-three (63) feet seven (7) inches to the point of beginning, excepting, also, from said southwest quarter of said section twenty-five (25) a parcel of land conveyed in a deed made by said Pewabic Mining Company to Samuel F. Hodge, the deed bearing date the 1st day of November, 1876, and recorded in said register's office of said county in volume seventeen (17) of deeds, at page fifty-one (51), described as follows:

Commencing at a point on the east boundary of John Senter's powder magizine lot, at the point where said line is intersected by the east and west section line between said section twenty-five (25) and thirty-six (36), thence north nineteen (19) degrees, twenty-three (23) minutes east, two hundred and thirty-nine (239) feet, thence due east two hundred and fifty-eight (258), thence at right angles due south to said section line, thence west along said section line o point of beginning; the minerals and the right to mine he same being retained by and reserved to said Pewabic Mining Company. Except also from above said south west quarter of said section twenty-five (25) a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to the Detroit and Lake Superior Copper Company, the deed bearing date November 15, 1878, and recorded in said register's office of said county in volume nineteen (19) of deeds, at page thirty (30), described as follows: Beginning at a point three hundred and forty (340) feet north from an iron pin in section line on the south boundary of section twenty-five (25), town 55 north of range thirty-four (34) west, that point being four hundred and twenty-four (424) feet east of the southwest corner of said section twenty-five (25), thence running west twenty (20) feet, thence north nineteen (19) degrees thirty-nine (39) minutes west four hundred and sixty-two (462) feet, thence due east seven hundred and fifteen (715) feet, thence south twenty-seven (27) degrees fifty-two (52) minutes west, four hundred and ninety-two feet, thence west twenty (20) feet, thence north eighty-five (85) feet, thence west two hundred and ninety (290) feet, thence south eighty-five (85) feet to place of beginning, containing four and sixty-five one-hundredths (465) acres, the minerals and the right to mine the

same being retained by and reserved to said Pewabic Company. Excepting from said southwest quarter of said section twenty-five (25) a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to Johnson Vivian, the deed bearing date the 28th day of April, 1879, and recorded in said register's office of said county in volume twenty (20) of deeds, at page four hundred and thirty-nine (439), described as follows: Commencing at the southwest corner of said section twenty-five (25), thence north along section line six hundred and sixty and one-tenth (660 $\frac{1}{10}$) feet, thence deflecting eighty-nine (89) degrees eight (8) minutes east two hundred and seventy-nine (279) feet seven inches, thence deflecting seventy (70) degrees twenty-one (21) minutes southeasterly three hundred and thirty-nine and eight-tenths (339 $\frac{8}{10}$) feet, thence deflecting seventy (70) degrees twenty-one (21) minutes east, twenty (20) feet, thence deflecting ninety (90) degrees south, three hundred and forty (340) feet, thence deflecting ninety (90) degrees west, four hundred and twenty-four (424) feet to place of beginning, containing five and seventy-eight one-hundredths (5 $\frac{78}{100}$) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company.

Reserving also from said southwest quarter of said section twenty-five (25) a parcel of land leased for ninety-nine (99) years to the Detroit and Lake Superior Copper Company, said lease being of date October 7, 1869, recorded in liber 1 of miscellaneous records, in the office of the register of deeds of said county, at page three hundred and twelve (312), described as follows: Commencing at a point on the north boundary of section thirty-six (36) in township fifty-five (55) north of range thirty-four (34) west, distant four

hundred and twenty-four (424) feet east from the northwest corner of said section thirty-six (36), thence running due north four hundred and twenty-five (425) feet to an iron stake, thence east two hundred and ninety (290) feet to an iron stake, thence south three hundred and twenty-five (325) feet to an iron stake, thence east six hundred and forty-one (641) feet to an iron stake, thence south one hundred (100) feet to the north boundary of said section thirty-six (36), thence west along said section line to the point of beginning, containing four and twenty-nine one-hundredths ($4\frac{29}{100}$) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company.

Excepting also from said southwest quarter of said section twenty-five (25) a tract of land leased to Joseph Hamel for a period of seventy-five (75) years, the lease being of date March 7, 1870, recorded in liber 1 of miscellaneous records, in the office of the register of deeds of said county, at page three hundred and thirty-six (336), described as follows: Commencing at the southwest corner of said section twenty-five (25), thence north along the western boundary eighteen hundred and ninety-one (1891) feet, thence east nine hundred and sixty-three (963) feet, thence south nineteen (19) degrees east two thousand (2,000) feet, thence west eighty (80) feet, thence north nineteen (19) degrees twenty-three (23) minutes east sixty-eight (68) feet eight (8) inches, thence north seventy (70) degrees thirty-seven (37) minutes west sixty (60) feet, thence south nineteen (19) degrees twenty-three (23) minutes west eighty-nine (89) feet nine (9) inches, thence west one hundred and eleven (111) feet, thence north one hundred (100) feet, thence west six hundred and forty-one (641) feet, thence north three

hundred and twenty-five (325) feet, thence west two hundred and ninety (290) feet, thence south four hundred and twenty-five (425) feet, thence west four hundred and twenty-four (424) feet to point of beginning, containing fifty-one and sixty-five one-hundredths (51 and $\frac{65}{100}$) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company. Reserving also from said southwest quarter of said section twenty-five (25) a tract leased to William Hosking for a period of twenty-five (25) years, the lease being of date September 7, 1869, recorded in liber 1 of miscellaneous records, in the office of the register of deeds of said county, at page four hundred and fifty (450), described as follows: A lot in section twenty-five (25), town fifty-five (55), north of range thirty-four (34) west, near wagon road leading to the Pewabic stamp mill, on which stands a house formerly owned by Thomas Odgers.

Reserving also from said southwest quarter of said section twenty-five (25), a track leased to John Philips for a period of twenty (20) years, the lease being of date June 29, 1872, recorded in liber 1, of miscellaneous records, in the office of the register of deeds of said county, at page five hundred and eighty-seven (587), described as follows: A lot of land on the right side of the road leading from the stamp mill to the mine, on which his dwelling house is situated. Excepting and reserving also from the west half of said section twenty-five (25), the right for the Quincy & Torch Lake Railroad, the instrument being of record in volume twenty-nine (29) of deeds, in the office of the register of deeds of said county, at page three hundred and fifteen (315), the instrument being of date May 23d, 1889, described as follows: A tract of land one hundred (100)

feet wide, being fifty (50) feet on each side of the center line hereinafter described, across the following pieces of land, viz: The west half of section twenty-five (25) township fifty-five (55) north, of range thirty-four (34) west, commencing at a point on the west section line of said section twenty-five one hundred and twenty and two-tenths (120 $\frac{2}{10}$) feet north of the quarter post; thence south eighty-five (85) degrees and twenty-six and one-third (26 $\frac{1}{3}$) minutes east, thirteen hundred and twelve and nine-tenths (1312 $\frac{9}{10}$) feet; thence on a two (2) degree curve to the left two hundred and seventy-eight and five-tenths (278 $\frac{5}{10}$) feet; thence north eighty-eight (88) degrees fifty-eight and one-half (58 $\frac{1}{2}$) minutes east, six hundred and forty-three and four-tenths (643 $\frac{4}{10}$) feet; thence on an eight (8) degree curve to the right three hundred and forty-three and four-tenths (343 $\frac{4}{10}$) feet, to a point on the north and south center line of said section twenty-five (25) ninety-six (96) feet of the centre post.

4. Also the east five hundred and seventy-six (576) feet of lot one (1), in section thirty-six (36) of township fifty-five (55) north, of range thirty-four (34) west, described as follows: Commencing at the north quarter post of said section thirty-six (36); thence west along the section line five hundred and seventy-six (576) feet to the east boundary of Hodges' property; thence south along said east boundary to the shore of Portage Lake; thence easterly and south-easterly along the shore of Portage Lake to the north and south centre line of said section thirty-six (36); thence north along said centre line to the quarter post of beginning.

5. All that portion of lot two (2) in section thirty-six (36), township fifty-five (55) north, of range thirty-four

(34) west, described as follows : Commencing at the meander corner of on the section line north of said section thirty-six (36), running east on said section line two hundred and forty-nine (249) feet ; thence south at right angles with said section line to the shore of Portage Lake ; thence northwesterly along said shore to meander corner of beginning.

6. Also the following described real estate, rights and easements situated in said county of Houghton, to wit : The vein or lode known as the Pewabic lode, which outcrops on lands of the Pewabic Mining Company, in said county of Houghton, and any other lode or lodes, vein or veins, which outcrops within two hundred (200) feet, east of the outcrop of said Pewabic lode, where the same lies under the southeast quarter of section twenty-three (23), in township fifty-five (55) north, of range thirty-four (34) west, in the county of Houghton, and the right to mine and work the said Pewabic lode, and such other vein or veins, lode or lodes, being the same property conveyed to the Pewabic Mining Company by Thomas D. Edwards and wife by warranty deed dated the 29th day of October, 1879, and recorded in the register's office of said county of Houghton, in liber 19 of deeds, on page three hundred and fifty-three (353).

7. Also the right to mine by a perpendicular line all minerals lying northwesterly of a line running north fifty-eight (58) degrees west from a point where the Pewabic vein at the surface of the earth crosses the dividing line between the lands of the Pewabic Mining Company and the lands of the Franklin Mining Company, being a part of the same rights and privileges that were conveyed to the Pewabic Mining Company by the Franklin Mining Company by

deed dated February 1, 1862, and recorded September 15, 1875, in the register's office of said county of Houghton, in volume seventeen (17) of deeds, on page nine (9).

8. Also the east half and the southwest quarter of section ten (10); also the southeast quarter and the southeast quarter of the southwest quarter and the southeast quarter of the northeast quarter of section nine (9), all in township fifty-five (55) north, of range thirty-four (34) west. All constituting and intending herein and hereby to embrace all the assets and property of the Pewabic Mining Company, a Michigan corporation, having its principal office in the State of Michigan in the said county of Houghton.

Also all of the assets and property, real and personal, including rights and the Pewabic Mining Company's lands above described as leased, and all lands not hereinafter described, belonging to the said The Pewabic Mining Company, and all other property, real, personal or mixed, and any other assets of said company not herein specifically described of every nature belonging to or appertaining to said company. Provided, however, that nothing herein contained shall be considered as passing to the said Thomas H. Mason and William Hart Smith, parties of the second part, the claim or claims, if any, against the former directors of the said Pewabic Mining Company, defendents in said cause, for any sum or sums found to be due from them on the accounting against them directed in said cause.

Together with all and singular the rights, titles, members, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining. To have and to hold, the said premises above described and hereby intended to be granted and conveyed unto the said parties of the only proper use, benefit and behoof of the said parties of the second part, their successors and assigns forever.

In witness whereof, the said party of the first part, Special Master, as aforesaid, has hereunto set his hand and seal the day and year first above written.

PETER WHITE [L. S.],
Special Master.

Signed, sealed and delivered
in presence of
JAMES H. CULLEN,
BENJAMIN S. WARREN.

STATE OF MICHIGAN, } ss.
County of Wayne. }

On this twenty-eighth (28) day of March, in the year of our Lord one thousand eight hundred and ninety-one, before the undersigned personally appeared Peter White, Special Master, known to me to be the person described in and who executed the above indenture, and acknowledged that he executed the same freely for the use and purposes therein mentioned.

JAMES H. CULLEN,
Notary Public in and for the County of Wayne, Mich.

J. H. C.
[NOT. SEAL]

[Indorsed.]

Copy.
Deed.
Peter White, Special Master, to Thomas H. Mason and William Hart Smith.

REGISTER'S OFFICE, } ss.
Houghton County, Mich. }

Received for record the 30th day of March, A. D. 1891, at 11 o'clock A. M., and recorded in Vol. 31 of Deeds, pages 425–432 inclusive.

PETER PRIMEAU,
Register.

Filed April 27, 1891.
C. L. FITCH,
[SEAL.] *Clerk.*

XIV.

DEED. MASON & SMITH TO QUINCY MINING CO., MARCH 28, 1891.

This indenture made this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and ninety-one, between Thomas H. Mason and William Hart Smith and Kate H. Smith, his wife, all of the city, county and State of New York, party herein of the first part, and the Quincy Mining Company, a body corporate, created and existing under the laws of the State of Michigan, and having its principal office in said State, in the county of Houghton, party herein of the second part, witnesseth

Whereas, in pursuance and by virtue of an order and decree of the Circuit Court of the United States, for the Western District of Michigan, Northern Division—in equity—made and dated on the sixth day of May, in the year of our Lord one thousand eight hundred and ninety, in a certain cause therein depending wherein Thomas H. Mason, William Hart Smith and Sullivan Ballou were complainants, and the Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon and the Pewabic Copper Company were defendants, Honorable Peter White, the Special Master appointed by said Court for that purpose in and by said decree, did by the direction and order of the said Court, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety-one, in accordance with said decree and the order of said Court, after notice, required by said

decree, at the front door of the Court House in the village and county of Houghton, in the State of Michigan in the Western District and Northern Division thereof, offer for sale and sell at public auction to the highest bidder therefor, in one body, all the real estate, lands and hereditaments, together with all and singular the houses, buildings, stamp mill, mining plant, engines, machinery, pumps, rolling stock, mine supplies, thereon and therein, and belonging thereto, and all the mining rights connected therewith, including the stampmill plant, with the pumps and buildings, the water front of the stamp mill site, on Lake Portage or River, eighty-nine dwellings, and nine buildings and shops and the entire equipment of the Pewabic Mining Company constituting all the assets and property of the Pewabic Mining Company, a Michigan corporation having its principal office in the State of Michigan, in the said county of Houghton, hereinafter more particularly set out and described and included.

And whereas, the said Thomas H. Mason and William Hart Smith, partners under the name and style of Mason & Smith, of the party herein of the first part, were the highest bidders at said sale, and then and there purchased the said property, and all of the property hereinafter more particularly described and included. And whereas afterwards, to wit, on the second day of March, in the year of our Lord one thousand eight hundred and ninety-one, in said Court and cause, on reading the Master's report of said sale theretofore filed, and after hearing all objections and exceptions to said report of sale, and to the confirmation thereof, it was ordered by the said Court that the objections and exceptions to said report be overruled, and that said report of sale, and said sale, be in all respects confirmed.

And whereas, in accordance with said decree and the orders of said Court, the said Special Master, on payment of the amount bid as aforesaid by the said purchasers at said sale, the receipt whereof was therein and thereby duly acknowledged by said Special Master, did, under his hand and seal, by due indenture bearing date the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and ninety-one, make, execute, deliver and acknowledge, as his free act and deed, in accordance with the laws of the State of Michigan, a conveyance of all and singular the property, real, personal and mixed aforesaid, and hereinafter more particularly described and included, unto the said Thomas H. Mason and William Hart Smith. And whereas the party of the first part has agreed to sell unto the party of the second part all of the property purchased by the party of the first part as aforesaid.

Now, therefore, the party of the first part, for and in consideration of the sum of seven hundred and ten thousand ($710,000) dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, remised, released, aliened and confirmed, and doth by these presents grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and its successors and assigns forever;

All those certain pieces or parcels of land situate and being in the county of Houghton and State of Michigan, and all the property, real, personal and mixed, described as follows, to wit: The following described real estate, together with all and singular the houses, buildings, stamp mill, mining plant, engines, machinery, pumps, rolling stock, mining supplies thereon and therein and belonging thereto,

and all mining rights connected therewith, including the stamp mill plant, with its pumps and buildings, the water front of the stamp mill site on Portage Lake or river, eighty-nine dwellings and nine buildings and shops, and entire mining equipment of the Pewabic Mining Company, said real estate and real interests being as follows, to wit:

1. The northwest quarter of section twenty-five (25) in township fifty-five (55) north, of range thirty-four (34) west.

2. The northeast quarter of section twenty-five (25) in township fifty-five (55) north, of range thirty-four (34) west, saving and excepting and reserving from said northeast quarter, as heretofore reserved in a conveyance to said Pewabic Mining Company by August Coburn and wife, five acres in said section twenty-five (25), which said five acres is in a square form with sides of equal length, on the north and west lines of said quarter section; excepting, also, a lot leased to William Tewk, September 1, 1866, the lease of the same being for twenty-five years, recorded in liber 1 of miscellaneous records, page 240, of record in the office of the register of deeds of Houghton county, Michigan, described as follows: Lot No. —— in the subdivision of the northeast quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west. Excepting and reserving also from said northeast quarter a tract leased to Isaac Jones July 1, 1868, the lease of the same being for twenty-five years, recorded in liber 1 of miscellaneous records, page 487, in the office of the register of deeds of said county, described as follows: The lot in the subdivision of the northeast quarter of section twenty-five (25) in township fifty-five (55) north, of range thirty-four (34) west, lands belonging to the Pewabic Mining Company.

3. Also the southwest quarter of said section twenty-five

(25) in the township fifty-five (55) north, of range thirty-four (34) west, saving and excepting from said southwest quarter a certain parcel of land conveyed in a deed by the said Pewabic Mining Company to the Franklin Mining Company, the deed bearing date the 21st day of August, 1864, recorded in said register's office of said county in liber 5 of deeds, page 43, described as follows: Beginning at a point on the section line between said sections twenty-five (25) and thirty-six (36), 422 feet 8 inches easterly from the northeast corner of lands owned by the Detroit & Lake Superior Copper Company, thence north nineteen (19) degrees twenty-three (23) minutes east, 89 feet 9 inches, thence at right angles southeasterly sixty feet, thence south 19 degrees 23 minutes west, 68 feet 8 inches to said line, between sections twenty-five (25) and thirty-six (36), and thence west on said line sixty-three (63) feet seven (7) inches to the point of beginning. Excepting also from said southwest quarter of section twenty-five (25), a parcel of land conveyed in a deed made by said Pewabic Mining Company to Samuel F. Hodge, the deed bearing date the 1st day of November, 1876, and recorded in said register's office of said county, in volume 17 of deeds, at page 51, described as follows:

Commencing at a point on the east boundary of John Senter's powder magazine lot, at the point where said line is intersected by the east and west section line between said sections twenty-five (25) and thirty-six (36), thence north nineteen (19) degrees twenty-three (23) minutes east, two hundred and thirty-nine (239) feet, thence due east two hundred and fifty-eight (258) feet, thence at right angles due south to said section line, thence west along said section line to point of beginning, the minerals and the right to

mine the same being retained by and reserved to said Pewabic Mining Company, and subject to sale at public vendue under this notice and in connection with other property of said company herein described. Excepting also from above said southwest quarter of said section twenty-five (25), a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to the Detroit & Lake Superior Copper Company, the deed bearing date November 15, 1878, and recorded in said register's office of said county, in volume 19 of deeds, at page 30, described as follows: Beginning at a point three hundred and forty (340) feet north from an iron pin in section line on the south boundary of section twenty-five (25), town fifty-five (55) north, of range thirty-four (34) west, that point being four hundred and twenty-four (424) feet east of the southwest corner of said section twenty-five (25), thence running west twenty (20) feet, thence north nineteen (19) degrees thirty-nine (39) minutes, west four hundred and sixty-two (462) feet, thence due east seven hundred and fifteen (715) feet, thence south twenty-seven (27) degrees fifty-two (52) minutes, west four hundred and ninety-two (492) feet, thence west twenty (20) feet, thence north eighty-five (85) feet, thence west two hundred and ninety (290) feet, thence south eighty-five (85) feet to place of beginning, containing four and sixty-five one-hundredths ($4\frac{65}{100}$) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company, and subject to sale at public vendue under this notice and in connection with other property of said company herein described. Excepting also from said southwest quarter of said section twenty-five (25) a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to Johnson Vivian, the deed

bearing date the 28th day of April, 1879, and recorded in said register's office of said county, in volume 20 of deeds, at page 439, described as follows:

Commencing at the southwest corner of said section twenty-five (25) thence north along section line, six hundred and sixty and one-tenth ($660\frac{1}{10}$) feet, thence deflecting eighty-nine (89) degrees eight (8) minutes east, two hundred and seventy-nine (279) feet seven (7) inches, thence deflecting seventy (70) degrees twenty-one (21) minutes south easterly three hundred and thirty-nine and eight-tenths ($339\frac{8}{10}$) feet, thence deflecting seventy (70) degrees twenty-one (21) minutes east twenty (20) feet, thence deflecting ninety (90) degrees south three hundred and forty (340) feet, thence deflecting ninety (90) degrees west four hundred and twenty-four (424) feet to place of beginning, containing five and seventy-eight one-hundreths ($5\frac{78}{100}$) acres; the minerals and the right to mine the same being retained by, and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said Company herein described. Reserving also from said southwest quarter of said section twenty-five (25) a parcel of land leased for ninety-nine years to the Detroit & Lake Superior Copper Company, said lease being of date October 7, 1869, recorded in liber 1 of miscellaneous records, in the office of the register of deeds of said county at p 312, described as follows: Commencing at a point on the north boundary of section thirty-six (36) in township fifty-five (55) north, of range thirty-four (34) west, distant four hundred and twenty-four (424) feet east, from the northwest corner of said section thirty-six (36), thence running due north four hundred and twenty-five (425) feet to an iron stake, thence east two hundred and ninety (290) feet to an iron stake, thence

south three hundred and twenty-five (325) feet to an iron stake, thence east six hundred and forty-one (641) feet to an iron stake, thence south one hundred (100) feet to the north boundary of said section thirty-six (36) thence west along said section line to the point of beginning, containing four and twenty-nine hundreths ($4\frac{29}{100}$) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company, and subject to sale at public vendue under this notice, and in connection with other property of said Company herein described. Excepting also from said southwest quarter of said section twenty-five (25) a tract of land leased to Joseph Hamel for a period of seventy-five years, the lease being of date March 7, 1870, recorded in liber 1 of miscellaneous records in the office of the register of deeds of said county, at page 336, described as follows: Commencing at the southwest corner of said section twenty-five (25), thence north along the west boundary, eighteen hundred and ninety-one (1891) feet, thence east nine hundred and sixty-three (963) feet, thence south nineteen (19) degrees east, two thousand (2000) feet, thence west eighty (80) feet, thence north nineteen (19) degrees twenty-three (23) minutes east sixty-eight (68) feet eight (8) inches, thence north seventy (70) degrees thirty-seven (37) minutes west, sixty (60) feet; thence south nineteen (19) degrees twenty-three (23) minutes west, eighty-nine (89) feet nine (9) inches; thence west one hundred and eleven (111) feet; thence north one hundred (100) feet; thence west six hundred and forty-one (641) feet; thence north three hundred and twenty-five (325) feet; thence west four hundred and twenty-four feet to point of beginning, containing fifty-one and sixty-five one hundredths ($51\frac{65}{100}$) acres, the minerals

and the right to mine the same being retained by and reserved to said Pewabic Mining Company, and subject to sale at public vendue under this notice, and in connection with other property of said company herein described. Reserving also from said southwest quarter of said section twenty-five (25) a tract leased to William Hosking for a period of twenty-five years, the lease being of date September 7, 1869, recorded in liber 1 of miscellaneous records, in the office of the register of deeds of said county, at page 450, described as follows: A lot in section twenty-five (25) town fifty-five (55) north, of range thirty-four (34) west, near wagon road leading to the Pewabic stamp mill, on which stands a house formerly owned by Thomas Odgers. Reserving also from said southwest quarter of said section twenty-five (25) a tract leased to John Philips for a period of twenty (20) years, the lease being of date June 29, 1872, recorded in liber 1 of miscellaneous records, in the office of the register of deeds of said county, at page 587, described as follows: A lot of land on the right side of the road leading from the stamp mill to the mine on which his dwelling house is situated. Excepting and reserving also from the west half of said section twenty-five (25) the right of way for the Quincy & Torch Lake Railroad, the instrument being of record in volume 29 of deeds, in the office of the register of deeds of said county, at page 315, the instrument being of date May 23, 1889, described as follows: A tract of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line hereinafter described, across the following piece of land, viz: The west half of section twenty-five (25), township fifty-five (55) north, of range thirty-four (34) west, commencing at a point on the west section line of said section twenty-five (25), one hundred

and twenty and two-tenths ($120\frac{2}{10}$) feet north of the quarter post; thence south eighty-five (85) degrees twenty-six and one-third ($26\frac{1}{3}$) minutes east, thirteen hundred and twelve and nine-tenths ($1312\frac{9}{10}$) feet; thence on a two (2) degree curve to the left two h ndred and seventy-eight and five-tenths ($278\frac{5}{10}$) feet; thence north eighty-eight (88) degrees fifty-eight and one-half ($58\frac{1}{2}$) minutes east, six hundred and forty-three and four-tenths ($643\frac{4}{10}$) feet; thence on an eight (8) degree curve to the right three hundred and forty-three and four tenths ($343\frac{4}{10}$) feet, to a point on the north and south center line of said section twenty-five (25) ninety-six (96) feet south of the center post.

4. Also the east five hundred and seventy-six (576) feet of lot one (1) in section thirty-six (36) of township fifty-five (55) north, of range thirty-four (34) west, described as follows: Commencing at the north quarter post of said section thirty-six (36), thence west along the section line five hundred and seventy-six (576) feet to the east boundary of Hodge's property, thence south along said east boundary to the shore of Portage Lake, thence easterly and southeasterly along the shore of Portage Lake to the north and south center line of said section thirty-six (36), thence north along said center line to the quarter post of beginning.

5. All that portion of lot two (2) in section thirty-six (36) township fifty-five (55), north of range thirty-four (34) west, described as follows: Commencing at the meander corner on the section line north of said section thirty-six (36) run east on said section line, two hundred and forty-nine (249) feet, thence south at right angles with said section line to the shore of Portage Lake, thence northwesterly along said shore to meander corner of beginning.

6. Also the following described real estate, rights and

easements, situated in said county of Houghton, to wit: The vein or lode, known as the Pewabic lode, which outcrops on lands of the Pewabic Mining Company, in said county of Houghton, and any other lode or lodes, vein or veins, which outcrop within two hundred (200) feet east of the outcrop of said Pewabic lode, where the same lies under the southeast quarter of section twenty-three (23), in township fifty-five (55) north, of range thirty-four (34) west, in the county of Houghton, and the right to mine and work the said Pewabic lode, and such other vein or veins, lode or lodes, being the same property conveyed to the Pewabic Mining Company by Thomas W. Edwards and wife, by warranty deed, dated the 29th day of October, 1879, and recorded in the register's office of said county of Houghton, in liber 19 of deeds, on page 353.

7. Also the rights to mine by a perpendicular line, all minerals, lying northwesterly of a line running north, fifty-eight (58) degrees west from a point where the Pewabic vein at the surface of the earth crosses the dividing line between the lands of the Pewabic Mining Company and the lands of the Franklin Mining Company, being a part of the same rights and privileges that were conveyed to the Pewabic Mining Company by the Franklin Mining Company, by deed dated February 1, 1862, and recorded September 15, 1875, in the register's office of said county of Houghton, in volume 17 of deeds, on page 9.

8. Also the east half and the southwest quarter of section ten (10), also the southeast quarter and the southeast quarter of the southwest quarter, and the southeast quarter of the northeast quarter of section nine (9), all in township fifty-five (55) north, of range thirty-four (34) west, all constituting and intending herein and hereby to embrace all

the assets and property of the Pewabic Mining Company, a Michigan corporation, having its principal office in the State of Michigan, in the said county of Houghton, and all of said assets and property, real and personal, including mining rights and the Pewabic Mining Company's lands above described as leased, and any land or lands not hereinbefore described, belonging to the said The Pewabic Mining Company, and any other property, real, personal or mixed, and any other assets of said company not herein specially described, of every nature, belonging to or appertaining to said compaany, provided, however, as is provided in the order of confirmation aforesaid, that nothing herein contained shall be considered as conveying or transferring the claim, or claims, if any, against the former directors of said Pewabic Mining Company, who are defendants in the cause described in the premises, for any sum or sums found to be due from them on the accounting against them directed by said decree of the court aforesaid.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion or reversions, remainder or remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the said hereditaments and appurtenances. To have and to hold the premises as before described, with the appurtenances, unto the said party of the second part, its successors and assigns forever.

And the said party of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said party of the second part, its successors and assigns, that they, the said party of

the first part, have not heretofore done, committed or wittingly or willingly suffered to be done, or committed any act, matter or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, are or shall, or may be charged or incumbered in title, estate or otherwise howsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

THOMAS H. MASON. [L. S.]
WILLIAM HART SMITH. [L. S.]
KATE H. SMITH. [L. S.]

Signed, Sealed and delivered
in presence of
W. R. TODD.
GEO. T. ACKERSON.

STATE OF NEW YORK,
City, County and State of New York. } ss.

On this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and ninety-one, before me, a Commissioner for the State of Michigan, personally came the before named Thomas H. Mason, William Hart Smith and Kate H. Smith, known to me to be the persons named in and who executed the foregoing instrument, and severally acknowledged the same to be their free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal this 28th day of March, A. D. 1891.

[SEAL] CHARLES EDGAR WILLS,
Commissioner for Michigan in New York,
115 and 117 Broadway, N. Y. City.

(Indorsed.)
Copy. DEED.

THOMAS H. MASON, and
WILLIAM HART SMITH and wife,
TO
THE QUINCY MINING CO.

REGISTER'S OFFICE, Houghton County, Mich. } ss.

Received for record the 1st day of April, A. D. 1891, at 10 o'clock A. M., and recorded in volume 31 of deeds, pages 432–439 inc.

PETER PRIMEAU,
Register.

Filed April 27, 1891.
C. L. FITCH,
[SEAL.] *Clerk.*

XV.

ORDER DENYING APPLICATION OF PEWABIC COMPANY TO SET ASIDE SALE.

Suit pending in said court, at the city of Grand Rapids, on this 27th day of April, one thousand eight hundred and ninety-one.

Before the Honorable Henry F. Severens, district judge, at Chambers.

The application of the said defendant, the Pewabic Mining Company, to vacate and set aside a sale of the property of said defendant, made by the Special Master, Peter White, and to order a resale of said property, coming on to be heard, after hearing Mr. R. C. Ostrander, counsel for the said defendant, the Pewabic Mining Company, in support of said application, and Alfred Russell and Don M. Dickinson opposed, and after consideration of the said application, it is ordered and adjudged that the said application be denied, and that the same be dismissed.

H. F. SEVERENS,
District Judge.

XVII.

ORDER FIXING BOND ON APPEAL AT $200,000.

N. B.—*No record* of order made allowing appeal, *nor proof of service* on opposite party of this claim of appeal filed March 10, wherein defendants appeal from order of Court of March 2.

F. M. Moore,
Deputy Clerk Marquette.

[See affidavit of Don M. Dickinson and certificate of clerk, printed below, and filed in this Court.]

United States of America—In the Circuit Court of the United States for the Western District of Michigan, Northern Division—In Equity.

Thomas H. Mason,
William Hart Smith,
Sullivan Ballou,
vs.
The Pewabic Mining Company,
Johnson Vivian,
Henry Billings,
Thomas H. Perkins,
Alden D. Buttrick,
Daniel L. Demmon and
The Pewabic Copper Company.

At Chambers, April 30, 1891.

The appeal of the above named defendants to the Supreme Court of the United States from the order con-

firming the Master's sale and his report thereof, having been, and on March 17, 1891, duly allowed, on application of said defendants, to fix the penalty of the bond to be given on said appeal, and for superseding the order appealed from, it is ordered that the penalty of said bond be, and the same hereby is, fixed at the sum of $200,000, with sureties to be approved by the Court.

H. F. SEVERENS,
District Judge.

[Indorsed.] No. 46.

The Circuit Court of the United States for the Western District of Michigan, Northern Division—In Equity. *Thomas H. Mason et al. vs. Pewabic Mining Co. et al.*

Order fixing bond on appeal.

Filed April 30, 1891.

C. L. FITCH,
Clerk.

SEAL.]

XVIII.

THOMAS H. MASON,
WILLIAM HART SMITH,
SULLIVAN BALLOU,

vs.

THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
HENRY BILLINGS,
THOMAS H. PERKINS,
ALDEN D. BUTTRICK,
DANIEL L. DEMMON, and
THE PEWABIC COPPER COMPANY.

June 3, A. D. 1891.

Now comes the defendant, The Pewabic Mining Company, and hereby claims the benefit of an appeal to the Supreme Court of the United States from the order made in said cause, on the 27th day of April, 1891, overruling and denying the motion and petition of this defendant to vacate and set aside the sale of the mining property of defendant, and to order a resale of said property.

F. A. BAKER and
STONE & GRAY,
Solicitors for the Defendant.

[Indorsed.]

No. 46. Circuit Court of the United States, Western District Michigan, Northern Division—In Equity. *Thomas H. Mason et al. vs. The Pewabic Mining Company et al.*

Claim of appeal.
Filed June 3, 1891.

F. A. BAKER and
STONE & GRAY,
Solicitors for the Defendant.

[SEAL.) F. M. MOORE,
Deputy Clerk.

XVIII.

THOMAS H. MASON,
WILLIAM HART SMITH,
SULLIVAN BALLOU,

vs.

THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
HENRY BILLINGS,
THOMAS H. PERKINS,
ALDEN D. BUTTRICK,
DANIEL L. DEMMON.

June 3, A. D. 1891.

Now comes the defendant, The Pewabic Mining Company, and hereby claims the benefit of an appeal to the Supreme Court of the United States from the order made in said cause by said Court, confirming the sale made by the Special Master's report of said sale, which said confirming order became final on the 27th day of April, A. D. 1891.

F. A. BAKER,
STONE & GRAY,
Solicitors for the Defendant.

[Indorsed.] No. 46.

Circuit Court of U. S., W. Dist. Mich., N. Div. In Equity. *Thomas H. Mason et al. vs. The Pewabic Mining Co. et al.*

Claim of appeal.

Filed June 3, 1891.

F. M. MOORE,
Dep. Clerk.

F. A. BAKER,
STONE & GRAY,
Sols. for the Defendant.

[SEAL.]

XIX.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION —IN EQUITY.

THOMAS H. MASON,
WILLIAM HART SMITH,
SULLIVAN BALLOU,
vs.
THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
HENRY BILLINGS,
THOMAS H. PERKINS,
ALDEN D. BUTTRICK,
DANIEL L. DEMMON, and
THE PEWABIC COPPER COMPANY.

June 3, A. D. 1891.

To the Judge of said Court:

The defendant, the Pewabic Mining Company, having claimed an appeal to the Supreme Court of the United States from an order made April 27, 1891, by said Court in said cause, denying the application of said defendant for an order setting aside the sale of the defendant's property, and for a resale thereof, application is hereby made for an order allowing said appeal, determining the penal sum of the bond to be given on said appeal, and that said appeal may operate as a *supersedeas*.

F. A. BAKER,
STONE & GRAY,
Solicitors for Defendant

To Dickinson, Thurber & Stevenson, Solicitors for Complainants:

GENTLEMEN—You will please take notice that an application, of which the above is a true copy, has been presented to the Hon. Henry F. Severens, District Judge, and that we are now awaiting the action of said judge thereon.

Detroit, June 5, 1891.

F. A. BAKER,
STONE & GRAY,
Solicitors for Defendant.

EASTERN DISTRICT OF MICHIGAN—ss.

Fred A. Baker, being duly sworn, deposes and says that on the 5th day of June, 1891, he served a notice of which the above and foregoing is a true copy, on Dickinson, Thurber & Stevenson, solicitors for said complainants, by leaving the same at their office with James H. Cullen, the clerk in charge thereof.

FRED A. BAKER.

Subscribed and sworn to before me
this 5th day of June, 1891, at
Detroit, in said District.

LELAND B. CASE,
Notary Public, Wayne County, Michigan.

[Indorsed.]

Circuit Court of the United States for Western District of Michigan, Northern Division—In Equity. *Thomas H. Mason et al. vs. Pewabic Mining Company et al.*

Proof of service of notice of application of appeal.

Filed August 10, 1891.

F. M. MOORE,
Deputy Clerk.

F. A. BAKER,
STONE & GRAY,
Solicitors for Defendant.

[SEAL.]

XX.

CIRCUIT COURT OF THE UNITED STATES, WESTERN DISTRICT OF MICHIGAN—IN EQUITY.

THOMAS H. MASON,
WILLIAM HART SMITH, and
SULLIVAN BALLOU,
vs.
THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
HENRY BILLINGS,
THOMAS H. PERKINS,
ALDEN B. BUTTRICK,
DANIEL L. DEMMON,
THE PEWABIC COPPER COMPANY, and
ALFRED A. MARCUS, Intervener.

CLAIM OF APPEAL.

The above named intervener, Alfred A Marcus, conceiving himself aggrieved by the orders entered on March 2, 1891, and April 27, 1891, in the above entitled proceeding, doth hereby appeal from said orders to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said orders were made authenticated may be sent to the Supreme Court of the United States.

ALFRED A. MARCUS,
By his Solicitor,
ROBERT M. MORSE, JR.
RUSSELL C. OSTRANDER.
CHARLES E. HELLIER.

The foregoing claim of appeal is hereby allowed. If a *supersedeas* is intended, let the appeal bond be in the sum of $150,000.

H. F. SEVERENS,
District Judge.

Dated June 12, 1891.

XXIII.

[Copy.]

THE UNITED STATES OF AMERICA—IN EQUITY.

To Thomas H. Mason and William Hart Smith, partners doing business under the firm name of Mason & Smith, and Sullivan Ballou, all of the City, County and State of New York, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at Washington, on the second Monday in October next, pursuant to an appeal claimed by Alfred A. Marcus, intervener, and allowed by the Circuit Court of the United States for the Western District of Michigan, Northern Division thereof, in a cause in equity wherein you are complainants and the Pewabic Mining Company, Daniel L. Demmon, Alden D. Buttrick, Johnson Vivian, Henry Billings, Thomas H. Perkins and the Pewabic Copper Company are defendants, to show cause, if any there be, why the decretal order made in said cause by said Court, on the 2d day of March, 1891, upon the hearing of the application of the said intervener, should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable H. F. Severens, District Judge of the United States, this 19th day of September, A. D. 1891.

H. F. SEVERENS,
U. S. District Judge.

EASTERN DISTRICT OF MICHIGAN—ss.

Fred A. Baker, being duly sworn, deposes and says that on the 26th day of September, 1891, he served a citation, of which the within is a true copy, on Dickinson, Thurber & Stevenson, solicitors for said complainants, by delivering the same to Don M. Dickinson, one of the members of said firm of solicitors in person, at the City of Detroit in said District.

FRED A. BAKER.

Subscribed and sworn to before me,
this 26th day of September, 1891.
ERVIN PALMER,
U. S. Commissioner East. Dist. Mich.

XXIII.

[Copy.]

THE UNITED STATES OF AMERICA—IN EQUITY.

To Thomas H. Mason and William Hart Smith, partners doing business under the firm name of Mason & Smith, and Sullivan Ballou, all of the City, County and State of New York, Greeting:

You are hereby cited and admonished to appear before the Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to an appeal claimed by Alfred A. Marcus, intervener, and allowed by the Circuit Court of the United States for the Western District of Michigan, Northern Division thereof, in a cause in equity wherein you are complainants and the Pewabic Mining Company, Daniel L. Demmon, Alden D. Buttrick, Johnson Vivian, Henry Billings, Thomas H. Perkins and the Pewabic Copper Company are defendants, to show cause, if any there be, why the decretal order

made in said cause by said Court on the 27th day of April, 1891, upon the hearing of the application of the said intervener, should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable H. F. Severens, District Judge of the United States, this 19th day of September, A. D. 1891.

H. F. SEVERENS,
U. S. Dist. Judge.

EASTERN DISTRICT OF MICHIGAN—ss.

Fred A. Baker, being duly sworn, deposes and says that on the 26th day of September, 1891, he served a citation, of which the within is a true copy, on Dickinson, Thurber & Stevenson, solicitors for said complainants, by delivering the same to Don M. Dickinson, one of the members of said firm of solicitors, in person, at the city of Detroit, in said District.

FRED A. BAKER.

Subscribed and sworn to before me,
this 28th day of September, 1891.
ERVIN PALMER,
U. S. Commissioner East. Dist. of Mich.

[Indorsed.]

No. 46. Circuit Court of the United States, Western District of Michigan, Northern Division—In Equity. *Thomas H. Mason et al. vs. Pewabic Mining Company et al.*

Proof of service of citation.

Filed September 29, 1891. F. M. MOORE,
Dep. Clerk.

R. C. OSTRANDER,
Solicitor for Defendants.

[SEAL.]

SUPREME COURT OF THE UNITED STATES.

THE PEWABIC MINING COMPANY,
vs.
THOMAS HENRY MASON *et al.*

STATE AND EASTERN DISTRICT OF MICHIGAN, Wayne County. } ss.

Don M. Dickinson, one of the solicitors for appellees, being duly sworn, says:

1. That he had no knowledge of the existence of the paper numbered 3 in the list of parts of the transcript which appellants, on October 23, 1891, requested appellees to print, until said day, to wit, October 23, 1891.

2. That no copy of the same, or notice of filing the same, or notice of any alleged allowance of the same, was ever served upon the solicitors for appellees.

3. That said paper, being entitled a claim of appeal, was addressed to the clerk, and that the record of said Court contains no entry of the said appeal or any allowance thereof; and affiant appends to this affidavit a certificate of the clerk to that effect.

DON M. DICKINSON.

Sworn and subscribed before me, this
16th day of November, A. D. 1891.
JAMES H. CULLEN,
Notary Public, Wayne County, Mich.

CERTIFICATE SHOWING NO ALLOWANCE OF APPEAL AND NO SERVICE OF NOTICE OF SAME.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF MICHIGAN,
NORTHERN DIVISION. } ss.

I, Francis M. Moore, deputy clerk of the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Northern Division, and having charge of the files and records thereof, do hereby certify that I have carefully searched the files and records of said Court in the cause of *Thomas H. Mason et al., Complainants vs. The Pewabic Mining Company et al., Defendants*, the same being File No. 46 on the equity calendar of said Court, and I find no record of any order made in said Court in said cause of date April 17, 1891, allowing appeal of defendants of date March 10, 1891, from an order of said Court made in said cause of date March 2, 1891, nor any record of proof of service on opposite party of notice of said claim of appeal of defendants of date March 10, 1891.

In testimony whereof, I have hereto set my hand and affixed the seal of said Court, at the city of Marquette, in said district and division, this 11th day of November, A. D. one thousand eight hundred and ninety-one.

Seal of the U. S. Circuit Court, Northern Division, Western Dist. of Mich.

FRANCIS M. MOORE,
Deputy Clerk.

Supplemental Brief of Appellees, Upon the Additional Parts of Record, Printed on the Demand of Appellants.

Nothing whatever in this additional matter requires notice except paper No. 3 (p. 8 above), an alleged claim of appeal by appellants, March 9, 1891, from the order of confirmation of sale of March 2.

1. This paper was addressed to the clerk of the Court, C. L. Fitch, and not to the Court, and filed March 10.

2. No allowance of the appeal by the Court is found on the files and records of the Court.

Affidavit of Mr. Dickinson (printed above).
Certificate of Dep. Clk., F. M. Moore, on file in this Court (printed above).

3. No notice of any claim of appeal, or of any allowance thereof, was ever given by appellants to appellees, or to their counsel, although the necessity for notice is recognized.

See XIX above, pp. 64, 65, same affidavit and certificate.

(*a*). This paper is of no validity unless addressed to the Court.

(*b*). An appeal is of no validity unless allowed.

The fact that no order of allowance is shown on the files and records of the Court, is *proof of the non-existence of any such order*.

Thus, where the assessment and proceedings to tax are not found in the proper office, it is proof of their non-existence; and a tax deed cannot stand.

Hall vs. Kellogg, 16 Mich., 135.

CAMPBELL, J., said: "When a paper is not found where, if in existence, it ought to be deposited or recorded, the

presumption arises that no such document has ever been in existence."

Nor is the *recital* of allowance in the order of April 30 proof that such allowance was made.

Platt vs. Stewart, 10 Mich., 260.

In that case, in a suit involving title to lands, it was held that a *recital* in an order of publication, which recital set forth the making of an affidavit of non-residence, *was not evidence that such an affidavit was made.*

CHRISTIANCY, J., said the absence of the affidavit from the record and files of the Court "*would authorize quite as strong an inference against the existence of a sufficient affidavit, as the recital would warrant in its favor.*"

(*c*) We submit that a claim of appeal, not addressed to the Court, and not allowed, and of which the appellees were not notified, and of which they were ignorant until October 23, 1891, when appellants notified them to print it (Mr. Dickinson's affidavit and clerk's certificate), *is no appeal at all.*

(*d*) It is plain that the appellants themselves took this view, for, on June 3, 1891, they took another appeal from the same order. (See XVIII below; second paper numbered XVIII, p. 63 above.) This paper contains a meaningless statement that the confirming order became *final* on April 27 (when the Court refused to set it aside). If this statement were correct, and the confirming order (March 2) was not final, it was not appealable.

It results that no appeal was made and allowed within sixty days, and the *supersedeas* should be vacated.

The motion to dismiss is not affected by the above paper.

DON M. DICKINSON,
ALFRED RUSSELL,
For Appellees.

SUPREME COURT OF THE UNITED STATES.

THE PEWABIC MINING CO.
vs.
THOMAS HENRY MASON,
WILLIAM HART SMITH and
SULLIVAN BALLOU.

SAME.
vs.
SAME.

ALFRED A. MARCUS,
vs.
SAME.

October Term, 1891.

To Messrs. Thomas H. Talbot, Robert M. Morse, Jr., and J. Lewis Stackpole, Counsel for Appellants:

GENTLEMEN—You are hereby notified that the printed motions to vacate and dismiss, heretofore filed and served on you, with parts of the transcripts printed, will be handed to the Court for hearing on Monday, the fourteenth day of December, A. D. 1891, and that you are herewith served with printed copies of such additional parts of the transcripts as you demanded to be printed, in your communication to us of October 23, 1891, and that the same have been filed, and will be handed to the Court on said day.

DON M. DICKINSON,
ALFRED RUSSELL,
Counsel for Appellees.

DISTRICT OF MASSACHUSETTS } ss.

Henry S. Dewey, of 23 Court street, being sworn, says that he served the above notice of hearing and printed matter on Thomas H. Talbot, Robert M. Morse, Jr., and J. Lewis Stackpole, at Boston, on the day of November, 1891.

Sworn and subscribed before me,
this day of November, 1891.

U. S. Commissioner, District of Massachusetts.

Office Supreme Court, U. S.
FILED
OCT 15 1891
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1891.

THE PEWABIC MINING CO.,
vs.
THOMAS HENRY MASON,
WILLIAM HART SMITH AND
SULLIVAN BALLOU.

SAME,
vs.
SAME.

ALFRED A. MARCUS,
vs.
SAME.

Three appeals from two different orders in the same cause, in equity, from the Circuit Court of the United States for the Western District of Michigan.

On motions to vacate the supersedeas on one appeal, and also to dismiss the same filed from the order confirming the sale under the mandate of this Court; and to dismiss the other two appeals (from the order refusing the petition of one Marcus to open the biddings), both orders in the same cause.

DON M. DICKINSON.
ALFRED RUSSELL.

John F. Eby & Co., Printers, Detroit, Mich.

Supreme Court of the United States

OCTOBER TERM, 1891.

THE PEWABIC MINING CO.,
vs.
THOMAS HENRY MASON,
WILLIAM HART SMITH, and
SULLIVAN BALLOU.

SAME,
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SAME.

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vs.
SAME.

Three appeals from two different orders in the same cause, in equity, from the Circuit Court of the United States for the Western District of Michigan.

On motions to vacate the *supersedeas* on one appeal, and also to dismiss the same (that from the order confirming the sale under the mandate of this Court); and to dismiss the other two appeals (from the order refusing the petition of one *Marcus* to open the biddings), both orders in the same cause.

MOTION.

And now come Thomas Henry Mason, William Hart Smith and Sullivan Ballou, complainants, and move the Court:

First. To vacate the *supersedeas* granted upon the appeal of the Pewabic Mining Company from the order of March 2, 1891, confirming the sale made under the mandate of this Court upon the ground that the appeal, bond, and citation were not allowed, issued, filed and served within the time fixed by statute, this delay being the act of the appellant and not of the Court.

Second. To dismiss said appeal, because the alleged president *pro tem.* and treasurer of a dissolved corporation have no power to appeal, and because the claim of appeal (III below) recites that the company alone appeals (and its counsel so notifies appellees), (VIII below), but the *supersedeas* bond recites that *all* the defendants below *except* Billings and Buttrick (who are dead) have appealed; and because the record shows Mason and Smith own a large majority of the stock of the dissolved corporation, and oppose appeal.

Third. To dismiss the appeal of the Pewabic Mining Company, and also the appeal of Mr. Marcus, from the order of April 27, 1891, refusing his application to open the biddings, the ground of this motion being that said order is not appealable. Also on the ground that the application was a fraud and not *bona fide.* Because, also, the order of confirmation was executed by deed to purchaser, who deeded to third parties.

These motions are based on so much of the Record as is hereinafter printed, and on the affidavit of Don M. Dickinson, filed and printed herewith.

DON M. DICKINSON,
ALFRED RUSSELL,
Of Counsel for Movers.

(*Appearing solely for the purposes of this motion.*)

BRIEF.

PRELIMINARY STATEMENT.

On the dissolution of the Pewabic (copper) Mining Company of Michigan, at the expiration of its term of corporate existence, Mason and Smith and Ballou, stockholders, filed the bill in this cause, praying for the sale of the property, at public vendue, to the highest bidder.

This bill was filed March 31, 1884, and on December 28, 1885, Mr. Justice Matthews, sitting at circuit, granted a decree for sale as prayed.

Mason vs. Pewabic Co., 25 Fed. Rep., 882.

More than four years afterwards that decree was affirmed here, January 12, 1890, in an opinion by Mr. Justice Miller, in

Mason vs. Pewabic Co., 133 U. S., 50,

and this Court issued its mandate, commanding sale as prayed.

The company thereafter contrived dilatory proceedings in the Court below, and January 19th last, applied to this Court, on a printed showing, to stay the sale advertised, and this Court denied the application on the merits.

MOTION.

And now come Thomas Henry Mason, William Hart Smith and Sullivan Ballou, complainants, and move the Court:

First. To vacate the *supersedeas* granted upon the appeal of the Pewabic Mining Company from the order of March 2, 1891, confirming the sale made under the mandate of this Court upon the ground that the appeal, bond, and citation were not allowed, issued, filed and served within the time fixed by statute, this delay being the act of the appellant and not of the Court.

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These motions are based on so much of the Record as is hereinafter printed, and on the affidavit of Don M. Dickinson, filed and printed herewith.

DON M. DICKINSON,
ALFRED RUSSELL,
Of Counsel for Movers.

(*Appearing solely for the purposes of this motion.*)

BRIEF.

PRELIMINARY STATEMENT.

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Mason vs. Pewabic Co., 133 U. S., 50,

and this Court issued its mandate, commanding sale as prayed.

The company thereafter contrived dilatory proceedings in the Court below, and January 19th last, applied to this Court, on a printed showing, to stay the sale advertised, and this Court denied the application on the merits.

Afterwards the Master, in the Circuit Court, made the sale, 24th January last, for seven hundred and ten thousand dollars ($710,000), and the sale was confirmed on March 2 last.

After the order of confirmation, on hearing, had been made absolute (I), the Master duly delivered his deed to the purchasers who sold to the Quincy Mining Company, a Michigan corporation, not made a party. Said Quincy took, and now hold, possession (see affidavit of Don M. Dickinson, XIII below).

The dissolved company appeals from the order of confirmation. One Marcus, alleged intervenor, also appeals from this order.

April 27 last, 56 days after confirmation, one Marcus, of Boston, applied to open the biddings. The application was denied, and the company appeals. Marcus also appeals separately.

We now, before discussing the motion further, *print the orders appealed from and all the subsequent proceedings, and the affidavits; the motions being based on this printed matter, which will enable the Court to "act understandingly without reference to the transcript."*

Power vs. Baker, 112 U. S., 710.

It should be added that before exception or appeal the order of confirmation was carried into effect by the Master deeding to purchasers, who conveyed to Quincy Mining Company, now in possession.

It is to be noted (1) that the Pewabic Company was not a party to the application of Marcus to open the biddings, which application was denied April 27; (2) that the application was for *leave to intervene* by Marcus.

I.

[Order of March 2, 1891, confirming the sale, under the mandate of this Court (133 U. S., 50), against the opposition of the appellant, the *Pewabic Co.*, and now appealed from.]

THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN—NORTHERN DIVISION—IN EQUITY.

THOMAS MASON,
WILLIAM HART SMITH, and
SULLIVAN BALLOU,
Complainants,
vs.
THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
HENRY BILLINGS,
THOMAS H. PERKINS,
ALDIN B. BUTTRICK,
DANIEL L. DEMMON, and
THE PEWABIC COPPER COMPANY,
Defendants.

Suit pending in said Court this 2d day of March, A. D. 1891, at Chambers.

In this cause a common order for confirmation of the Special Master's report of sale of all the assets and property of the defendant, The Pewabic Mining Company, having been heretofore been duly entered, and proof of service thereof filed, and afterwards all the defendants having filed objections and exceptions to said report of sale, which have been fully argued by counsel of the respective parties, and no motion having been made or served to open the biddings, it is ordered that the objections and exceptions to said report be, and the same are hereby overruled, and that said report of sale be, and the same is hereby

in all respects confirmed, provided, however, that nothing herein contained, or in said sale, shall be considered as passing to the purchasers, the claim or claims, if any, against the former directors and defendants in this cause, for any sum or sums found to be due from them on the accounting against them directed by the decree in this cause.

H. F. SEVERENS,
District Judge.

II.

[Order of April 27, 1891, refusing the application of the appellant *Marcus*, to intervene and to open the biddings, and now appealed from by the Pewabic Company and also by Marcus.]

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN—NORTHERN DIVISION—IN EQUITY.

THOMAS H. MASON,
WILLIAM HART SMITH, and
SULLIVAN BALLOU,
Complainants.

vs.

THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
HENRY BILLINGS,
THOMAS H. PERKINS,
ALDEN B. BUTTRICK,
DANIEL L. DEMMON, and
THE PEWABIC COPPER COMPANY,
Defendants.

Suit pending in said Court, in the city of Grand Rapids, on this 27th day of April, one thousand eight hundred and ninety-one.

Before the Honorable HENRY F. SEVERENS, District Judge—At Chambers.

[SEAL.]

The petition of Alfred A. Marcus, praying among other things, that he may be allowed to intervene in said cause and object to the report of sale of the Special Master in said cause, that the sale of the property of the Pewabic Mining Company, made on January 24, 1891, be declared null and void, and be set aside; and that said Special Master be ordered to offer said property for sale in the manner decreed by the Court, at the expense of the said Marcus; coming on to be heard, on reading and filing the affidavits submitted in behalf of the said Alfred A. Marcus, together with a circular letter issued by the Quincy Mining Company, and certain letters addressed to R. M. Morse, Jr., filed with said affidavits, and which were treated as evidence at the hearing; and after reading and filing the affidavits submitted in behalf of Thomas H. Mason and William Hart Smith in opposition to the prayer to the petition, and after hearing R. M. Morse, Jr., C. E. Hellier and R. C. Ostrander, counsel for said Marcus in support of said petition, and Alfred Russell and Don M. Dickinson opposed, in behalf of Thomas H. Mason and William Hart Smith, it is considered by the Court and ordered and adjudged that the petition of said Marcus be denied, and that the same be dismissed with ten dollars costs.

H. F. SEVERENS,
District Judge.

[Endorsed.]

46. The Circuit Court of the United States for the Western District of Michigan—Northern Division—In

equity. Thomas H. Mason *et al. vs.* Pewabic Mining Co. *et al.* Order denying petition of Alfred A. Marcus.

Filed April 27, 1891.

[SEAL.] C. L. FITCH,
Clerk.

III.

[Appeal from order of March 2, 1891, confirming sale made under mandate of this court.]

(Appeal delivered to Judge out of court June 12, 1891, and allowance dated June 12, out of court, but filed July 25, 1891.)

UNITED STATES OF AMERICA.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN,' NORTHERN DIVISION—IN EQUITY.

THOMAS H. MASON,
SULLIVAN BALLOU,
WILLIAM HART SMITH,

vs.

THE PEWABIC MINING COMPANY,
HENRY BILLINGS,
ALDEN D. BUTTRICK,
JOHNSON VIVIAN,
THOMAS H. PERKINS,
DANIEL L. DEMMON, and the
PEWABIC COPPER COMPANY.

To the Judge of said Court:

The defendant, The Pewabic Mining Company above named, having claimed an appeal to the Supreme Court of

the United States from an order entered in said cause (*March 2, 1891, is the date of the order. See copy above*), confirming the Master's sale of property, January 24, 1891, and the Master's report of said sale, which said confirming order became absolute on April 27, 1891 (*this is not so; see Doc. I and II above*, and see their own bond, IV, below, and citation VIII), application is hereby made for an order allowing said appeal, determining the penal sum of the bond to be given on said appeal, and that said appeal may operate as a *supersedeas*.

(Signed) F. A. Baker,
Stone & Gray,
Solicitors for Defendant.

The foregoing claim of appeal is hereby allowed and the penalty of the bond therein fixed at $150,000.

Dated June 12, 1891. Filed July 25, 1891.

(Signed) H. F. Severens,
District Judge.

IV.

Supersedeas Bond, on appeal of Pewabic Co., from order of 2d March, 1891, confirming sale.

Bond filed July 25, 1891. Dated July 23. Accepted by Mr. Justice Gray.

Know all Men by these Presents, that we, the Pewabic Mining Company as principal, and Daniel L. Demmon and Charles A. Prince, of Boston, in the county of Suffolk and commonwealth of Massachusetts, as sureties, are held and firmly bound unto Thomas H. Mason and William Hart Smith, who are partners in trade, doing business

under the name and style of Mason & Smith, and Sullivan Ballou, of the city, county and State of New York, in the full and just sum of one hundred and fifty thousand ($150,000) dollars, to be paid to the said Mason, Smith and Ballou as aforesaid, their certain attorney, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 23d day of July, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas, lately at a term of the Circuit Court of the United States for the western district of Michigan, northern division, in a suit in equity depending in said Court, between said Mason, Smith and Ballou as plaintiffs, and said Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon and the Pewabic Copper Company as defendants, a sale of the property of the said Pewabic Mining Company was made on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety-one, and at said sale said Mason and Smith became purchasers of said property, and on the second day of March thereafter, and in said year now current, said sale was confirmed by order or decree of Court against said defendants; *and the said defendants, except said Billings and Buttrick, who have deceased*, have obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse said decree in the said suit, and a citation directed to the said plaintiffs, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, on the twenty-second day of August, A. D. 1891.

Now the condition of the above obligation is such that if the said appellants shall prosecute their appeal to effect, and answer all costs of suit, and the sum recovered for the use and detention of the property and just damages for delay and costs and interest on appeal, if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

(Signed) PEWABIC MINING CO., [SEAL]
By HENRY J. STEVENS,
Pres. pro tem.
PEWABIC MINING COMPANY, [SEAL]
By D. L. DEMMON,
Treas.
D. L. DEMMON. [SEAL]
CHAS. A. PRINCE. [SEAL]

Signed, sealed and delivered in presence of
C. E. HELLIER.
To H. J. S.,
[SEAL] " D. L. D., *Tr.*,
" D. L. D.,
" C. A. P.

Bond and sureties approved, and it is ordered that this bond operate as a *supersedeas*, and that this bond and the affidavit of Thomas H. Talbot containing the application for the approval of this bond, and the affidavits of Daniel L. Demmon and Charles A. Prince upon said application, and upon the application for the approval of another appeal bond in this cause, dated July 14th, 1891, be transmitted to the clerk of the Circuit Court of the United States for the western district of Michigan, northern division thereof.

(Signed) HORACE GRAY,
Associate Justice of the Supreme Court of the United States.

V.

(Affidavit of surety to *supersedeas* bond, filed July 25, 1891.)

CIRCUIT COURT OF THE UNITED STATES, WESTERN DISTRICT OF MICHIGAN.

THOMAS H. MASON *et al.*
vs.
PEWABIC MINING COMPANY *et al.*

AFFIDAVIT OF DANIEL L. DEMMON.

I, Daniel L. Demmon of Boston, in the county of Suffolk and commonwealth of Massachusetts, on oath say that I have signed as surety a *supersedeas* bond in the penal sum of one hundred and fifty thousand dollars ($150,000) in the above named action; that I am an officer in and a large holder of the stock of copper mining companies; that I own real estate in said commonwealth of the value of not less than two hundred thousand dollars above all incumbrances and that I am worth above all my liabilities at least two hundred thousand dollars, and that I am able to respond and will respond to any obligation which may be incurred by me on account of said bond.

(Signed) DANIEL L. DEMMON.

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

BOSTON, July 22, 1891.

Then personally appeared the above named Daniel L.

Demmon and made oath that the foregoing affidavit by him subscribed is true. Before me,

[SEAL.] (Signed) FRED W. BROWN,
Notary Public.

VI.

(Affidavit of second surety to *supersedeas* bond, filed July 25, 1891.)

CIRCUIT COURT OF THE UNITED STATES—WESTERN DISTRICT OF MICHIGAN.

THOMAS H. MASON *et al.*
vs.
PEWABIC MINING COMPANY *et als.*

AFFIDAVIT OF CHARLES A. PRINCE.

I, Charles A. Prince, of Boston, in the county of Suffolk, and commonwealth of Massachusetts, on oath, say that I have signed as surety a *supersedeas* bond in the penal sum of one hundred and fifty thousand ($150,000) dollars in the above named action; that I am and have been for many years, in practice in said Boston as an attorney-at-law, and that I am a director and the general counsel of the New York & New England Railroad Company; that I own real estate in said commonwealth of the value of not less than one hundred and fifty thousand dollars, and that I am worth above all my liabilities at least one hundred and fifty thousand dollars, and that I am able to respond, and will respond, to any obligation which may be incurred by me on account of said bond.

(Signed) CHARLES A. PRINCE.

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

BOSTON, July 2nd, 1891.

Then personally appeared Charles A. Prince and made oath that the foregoing statement by him subscribed is true.

Before me,

[SEAL.] (Signed) FRED W. BROWN,
Notary Public.

VII.

[Affidavit of Thomas H. Talbot, solicitor for appellant Pewabic Co., *filed July 25th, 1891 (apparently designed* as the foundation of or claim that the delay was the act of the Court, and not of the appellant company.)]

CIRCUIT COURT OF THE UNITED STATES—WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION, IN THE SIXTH CIRCUIT.

THOMAS H. MASON et. al. vs. THE PEWABIC MINING COMPANY et. al.	*In Equity.*

In the matter of an application by the Pewabic Mining Company to the Honorable Horace Gray, Associate Justice of the Supreme Court of the United States for the first circuit, for his approval of a *supersedeas* bond.

AFFIDAVIT OF THOMAS H. TALBOT.

From early in 1887 I have been counsel for said Pewabic Mining Company and had the direction of its defense, which, of late, has been conducted by lawyers in Michigan, with whom my communication has been mostly by mail. June

15th, 1891, I learned by letter of the allowance by Judge Severens, on June 12th, of appeals from his action of April 27th, and of his fixing the penalty of a *supersedeas* bond, and on the same day I wrote to gentlemen in Michigan, one in the Upper Peninsula, known to be friendly to the Pewabic Mining Company, and interested in its controversy, to ascertain whether they would sign the *supersedeas* bond as sureties.

When this correspondence, which, somewhat to my disappointment, resulted in those gentlemen's declining to become sureties, had closed, I immediately applied to Mr. Charles A. Prince, who consented to consider the matter, and his signature as a co-surety with Mr. Demmon was procured by July 1.

On that day, in conference of counsel, it was arranged that I should go to Detroit the next day to submit the bond to Mr. Justice Brown, whose approval could make a *supersedeas* operative upon the decree of March 2 (if such was still in force), as well as upon that of April 27. Detroit would be reached soon after nine o'clock on July 3, a business day; and any removable objections to the bond which Mr. Justice Brown should have pointed out, could have been communicated to Boston on that day, and a new bond acceptable to him could have been executed in Boston and forwarded, so as to have reached Detroit by Monday, July 6, during all of which last day the ordinary power even of a subordinate judge to approve a bond continued.

On July 1 a telegram was sent to the Company's counsel in Detroit, to arrange with Mr. Justice Brown for the presentation of this bond, and to communicate if there was any difficulty in thus arranging. No answer to this telegram was received down to the time when I left Boston in the

fast train for the West, on July 2. But on reaching Detroit, on the morning of July 3, I learned that Mr. Justice Brown had left for Europe; and, in fact, a despatch to that effect had been received in Boston that same morning. As it was still within the authority of the judge who acted in this case—Hon. H. F. Severens, district judge for the Western District—to raise a *supersedeas* of his action of April 27, I determined to endeavor to submit the bond to him. Telegrams were at once sent to his residence in Kalamazoo, and to his place of holding court, Grand Rapids, to ascertain where he was; but no answers were received until the afternoon train left for each of those places. I took the train to Kalamazoo, where I thought Judge Severens would return that night, at the close of the working week.

Business was closed in Boston before the train reached Kalamazoo—five o'clock, St. Louis time—and Judge Severens did not reach home for some hours thereafter. I saw him about nine o'clock the next morning, and, by his appointment, his interview with me was later, closing about ten o'clock.

After reading the bond carefully, he said that he could not approve it in that form, because it did not specify under which of the appeals taken by the Pewabic Mining Company it was to operate, and, also, that it did not recite that the complainants, Mason and Smith, became purchasers of the property sold Jan. 24. He examined the affidavits as to the sufficiency of the sureties, and expressed himself satisfied therewith.

He then suggested that a new bond might be executed in Detroit on Monday, then next, when he was to be in that city, and that it could then be submitted to him for his approval. To bring this about he suggested that I should

at once telegraph to Boston, and procure the attendance of the requisite parties in Detroit on Monday.

This suggestion was made at Kalamazoo, a hundred and forty miles beyond Detroit, about ten o'clock on Saturday morning, July 4th, not a business day. Where any one of the parties signing the bond, or any of their Boston counsel then were I did not know, and it seemed to me then, as I have since ascertained it actually was, impracticable by telegraphing to procure the three signers of the bond, to take at Boston the train of 2:15, Sunday afternoon, July 5, so as to be in Detroit during business hours on July 6. I stated this impracticability to Judge Severens. The Judge suggested that there was ample time to bring it about, to which I replied that there might be on any other Saturday than this; but on this Saturday—being a holiday—the thing could not be accomplished; and that the resort of my client, the appellant, must be to the authority conferred by the statute upon a justice of the Supreme Court to approve a *supersedeas* bond after the power of a subordinate judge to do so had expired.

Upon my return from Michigan, I drew a new bond, in compliance with the requirements of Judge Severens. His suggestions of clerical errors I adopted so far as verification justified them, and the fact of purchase and the names of the purchasers, as well as the specification of the decree appealed from, now appear in the bonds which are submitted for approval.

(Signed) THOMAS H. TALBOT.

[SEAL] Personally appeared the above subscribed Thomas H. Talbot and made oath that the above statement by him subscribed is true, before me.

(Signed) FRED W. BROWN,
Notary Public.

VIII.

(Citation on appeal of Pewabic Co. from order of March 2, 1891, confirming sale under the mandate of this Court. *Citation filed July 25, 1891.*) *Notice of same served July 29, 1891.*

THE UNITED STATES OF AMERICA—EQUITY.

To Thomas H. Mason and William Hart Smith, partners, and doing business under the name and style of Mason & Smith, and Sullivan Ballou, all of the city, county and State of New York. Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the twenty-second day of August next, pursuant to an appeal claimed and allowed by the Circuit Court of the United States for the Western District of Michigan, Northern Division thereof, in a cause in equity wherein The Pewabic Mining Company are appellants, and you are defendants, to show cause, if any there be, why the decree rendered against the said appellants should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Horace Gray, Associate Justice of the Supreme Court of the United States, this 23d day of July, in the year of our Lord one thousand eight hundred and ninety-one.

HORACE GRAY,
Justice Supreme Court U. S.

The citation is underwritten as follows:

The appeal from the order or decree of March 2, 1891 will not be prosecuted or perfected by the appellants, other than the Pewabic Mining Company, as appears in a paper which I send to Mr. Ostrander for filing in Court. Therefore their names are not in this citation.

THOMAS H. TALBOT,
Counsel for those other Defendants.

IX.

[Appeal and allowance, on appeal of the Pewabic Mining Company from order of April 27, 1891, refusing the application of Alfred A. Marcus to intervene and open biddings.]

(Appeal delivered to Judge out of court, and allowance made out of court, and filed July 25, 1891.)

UNITED STATES OF AMERICA.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION—IN EQUITY.

THOMAS H. MASON,
SULLIVAN BALLOU,
WILLIAM HART SMITH,

vs.

THE PEWABIC MINING COMPANY,
HENRY BILLINGS,
ALDEN D. BUTTRICK,
JOHNSON VIVIAN,
THOMAS H. PERKINS,
DANIEL L. DEMMON, and the
PEWABIC COPPER COMPANY.

To the Judge of said Court:

The defendant, The Pewabic Mining Company, having claimed an appeal to the Supreme Court of the United States from an order made on April 27th, 1891, by said Court in said cause, denying the application of said defend-

ant for an order setting aside the sale of the defendant' property, and for a re-sale thereof, application is hereby made for an order allowing said appeal, determining the penal sum of the bond to be given on said appeal, and that said appeal may operate as a *supersedeas*.

(Signed) F. A. BAKER,
STONE & GRAY,
Solicitors for Defendants.

The foregoing claim of appeal is hereby allowed, and the penalty of the bond therein fixed at the sum of $150,000.

Dated June 12, 1891. Filed July 25, 1891.

(Signed) H. F. SEVERENS,
District Judge.

X.

[Bond on appeal of the Pewabic Mining Company from order of April 27, 1891, refusing the application of Alfred A. Marcus to intervene and open biddings. Bond filed July 25, 1891.]

KNOW ALL MEN BY THESE PRESENTS, That we, the Pewabic Mining Company, as Principal, and Daniel L. Demmon and Charles A. Prince, of Boston, in the County of Suffolk and commonwealth of Massachusetts as sureties, are held and firmly bound unto Thomas H. Mason and William Hart Smith, who are partners in trade, doing business under the name and style of Mason & Smith, and Sullivan Ballou, all of the city, county and State of New York, in the full and just sum of one hundred and fifty thousand dollars, to be paid to the said Mason & Smith as aforesaid, and said Ballou, their certain attorney, executors, administrators or assigns, to which payment well and truly to be made we

bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this fourteenth day of July, in the year of our Lord one thousand eight hundred and ninety-one.

WHEREAS, Lately at a term of the Circuit Court of the United States for the Western District of Michigan, Northern Division, in a suit in equity depending in said Court between said Mason & Smith as aforesaid, and said Ballou as plaintiffs, and said Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Buttrick, Daniel L. Demmon, and the Pewabic Copper Company as defendants, a sale of the property of said Pewabic Mining Company was made on the twenty-fourth day of January, A. D. 1891, at which sale said Mason & Smith became purchasers of said property, and by order of said Court said sale to Mason & Smith was, on the second day of March, A. D. 1891, confirmed; and again on the twenty-seventh day of April, 1891, a petition of the said Pewabic Mining Company and of one Alfred A. Marcus that said sale may be set aside, and said property might be sold again being denied, said order of confirmation was made final (*this is not so, see II above*); and the said Pewabic Mining Company have obtained an appeal to remove said cause to the Supreme Court of the United States to reverse the final decree of confirmation in said suit, and a citation directed to the said plaintiffs, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the twenty-second day of August, A. D. 1891.

Now the condition of the above obligation is such, that if the said appellants shall prosecute their said appeal to effect,

and answer all costs of the suit and the sum recovered for the use and detention of the property and just damages for delay and costs and interest on the appeal. If they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

(Signed) PEWABIC MINING CO, [SEAL.]
By THOMAS H. PERKINS,
President.
D. L. DEMMON,
Treasurer.
D. L. DEMMON, [SEAL.]
CHARLES A. PRINCE. [SEAL.]

Signed, sealed and delivered
in presence of
CHARLES E. HELLIER.
Witness to T. H. P. Pres.
" " D. L. D. Treas.
" " D. L. D.
" " C. A. P.

Bond and sureties approved, and it is ordered that this bond operate as a *supersedeas* and that this bond be transmitted to the Clerk of the Circuit Court of the United States for the Western District of Michigan, Northern Division thereof.

(Signed) HORACE GRAY,
Associate Justice of the Supreme Court of the United States.

XI.

THE UNITED STATES OF AMERICA—EQUITY.

To Thomas H. Mason and William Hart Smith, partners, and doing business under the firm name of Mason & Smith, and Sullivan Ballou, all of the city, county and State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the twenty-second day of August next, pursuant to an appeal claimed and allowed by the Circuit Court of the United States for the Western District of Michigan, northern division thereof, in a cause in equity wherein the Pewabic Mining Company are appellants and you are defendants to show cause, if any there be, why the decree rendered against the said appellants should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Horace Gray, Associate Justice of the Supreme Court of the United States, this 23d day of July, in the year of our Lord one thousand eight hundred and ninety-one.

HORACE GRAY,
Justice Supreme Court U. S.

XII.

Notice served July 29, 1881, by counsel for the appellant, the Pewabic Mining Company, upon Mason & Smith appellees, of the filing of the supersedeas bond on appeal from the order of March 2, 1891, confirming the sale under the mandate of this Court Sent by mail and received August 1, 1891.

OFFICE OF ROBERT M. MORSE JR.,
EQUITABLE BUILDING,
BOSTON, July 29, 1891.

MASON *et al.*

vs.

PEWABIC MINING COMPANY *et al.*

THOMAS H. MASON,
WILLIAM HART SMITH,
52 Broadway, Room 70, New York.

DEAR SIRS—You are hereby notified that on the 23d of July, 1891, Mr. Justice Gray of the United States Supreme Court allowed two *supersedeas* bonds in the sum of $150,000 each, given by the Pewabic Mining Company in the above entitled action and ordered that the said bonds operate as a *supersedeas* of the decrees of Judge Severens, of March 2 and April 27, 1891, confirming the sale of the Pewabic property to Messrs Mason and Smith, and denying the Marcus petition respectively, and that said bonds have been duly filed in the cause.

Yours respectfully,

(Signed) THOMAS H. TALBOT,
(Signed) R. M. MORSE JR.
Of Counsel for the Pewabic Mining Company.

XIII.

Affidavit of Don M. Dickinson showing that the delay in perfecting the appeal and filing the supersedeas bond was not the act of the Court.

SUPREME COURT OF THE UNITED STATES.

THE PEWABIC MINING CO., *Appellant,*
vs.
THOMAS HENRY MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU.

Three appeals from orders confirming sale, etc., under mandate of this Court.

UNITED STATES OF AMERICA, EASTERN DISTRICT OF MICHIGAN. } ss.

Don M. Dickinson, being duly sworn, says:

1. That he has represented the appellees in this litigation since 1884, continuously.

2. That deponent attaches to this, his affidavit, the original notice mailed by Thomas H. Talbot and Robert M. Morse, Jr., of counsel for the Pewabic Mining Co., appellant, to Thomas H. Mason and William Hart Smith, July 29th, 1891, notifying them of the allowance of the two supersedeas bonds in this cause, a printed copy of which notice is annexed to the motions in this cause.

3. That he has read the affidavit of Thomas H. Talbot, apparently intended as the foundation of a claim that the delay in filing the supersedeas bond was the act of the Court.

4. Deponent says that his practice during the year last past has made it necessary for him to appear before the Judges of the Federal Courts in the Districts of Michigan, and the Judge of the Circuit in which Michigan is situated, and to know of their whereabouts.

That since the order of confirmation was entered in this cause (after argument on exceptions to the Master's report of sale and in confirmation of the common order entered under the rules and practice of this Court), to wit, March 2d, 1891, his Honor Judge Severens, District Judge for the Western District of Michigan, has been in the State of Michigan at all times. And further saith the Circuit Judge of this circuit, Hon. Howell E. Jackson, has been engaged in the circuit before and since March 2d, 1891, constantly, and that in the month of May, 1891, he held sessions of the Circuit Court at Detroit and at Grand Rapids.

Deponent further saith that shortly after the adjournment of the Supreme Court of the United States of the session for the October term, 1890, Mr. Justice Brown returned to Detroit and remained there until June 20th, 1891, when he left for the sea board to take ship for Europe, which he did on June 27th, 1891.

Deponent further saith that since the original appeal of this cause to the Supreme Court of the United States and before the final determination of the cause by that Court, this deponent and his associate, Mr. Russell, have represented stockholders of the Pewabic Mining Company, holding a large majority of the forty thousand shares, which is the total capital stock of said company. That it appears by the files and records of the proceedings in the cause in the Court below, and by the Master's first report filed under the decree entered on the mandate of this Court, that deponent filed

with the Special Master the original certificates of stock, aggregating some twenty-one thousand shares, and pledged them in behalf of the majority of the stockholders of said Pewabic Mining Company, as an assurance that a minimum bid would be made of an amount equal to that required by the mandate of this Court to make a valid sale.

Deponent further saith that after the sale of the Pewabic property by the Special Master, for $710,000.00, to Messrs. Mason & Smith as the highest bidders, on January 24th, 1891, and after objections to the report of the sale had been overruled, and confirmation made absolute by the Court, on March 2d, 1891, and before any other motions were made or entered in the cause, and before any appeal had been asked for or allowed, Messrs. Mason & Smith, the purchasers, demanded and received of the Special Master a conveyance of the property of the Pewabic Mining Company in due form, and they entered into possession of the property; and thereafter the said Mason & Smith negotiated a sale of the said property and all thereof to the Quincy Mining Company, a corporation under the laws of the State of Michigan, and sold and conveyed the same by formal conveyance, to the Quincy Mining Company aforesaid, who entered into possession under said conveyance, and that on both these sales and transfers, the consideration, as deponent is advised and believes, was fully paid, and that ever since the said transfer to the said Quincy Mining Company, the said Quincy Mining Company has been in possession and improving said property.

DON M. DICKINSON.

Subscribed and sworn to before me, this second day of October, A. D. 1891.

{ NOTARIAL SEAL. } OLIVER M. LEONARD,
Notary Public, Wayne County, Mich.

XIV.

(Citation on appeal of Alfred A. Marcus from order confirming sale. Citation issued September 19, 1891.)

THE UNITED STATES OF AMERICA—IN EQUITY.

To Thomas H. Mason and William Hart Smith, partners, doing business under the firm name of Mason & Smith, and Sullivan Ballou, all of the City, County and State of New York. Greeting:

You are hereby cited and admonished to be and appear before a Supreme Court of the United States, to be holden at Washington, on the second Monday in October next, pursuant to an appeal claimed by Alfred A. Marcus, intervenor, and allowed by the Circuit Court of the United States for the Western District of Michigan, Northern Division thereof, in a cause in equity wherein you are complainants, and the Pewabic Mining Company, Daniel L. Demmon, Alden D. Buttrick, Johnson Vivian, Henry Billings, Thomas H. Perkins and the Pewabic Copper Company are defendants, to show cause, if any there be, why the decretal order made in said cause by said Court, on the 2d day of March, 1891, upon the hearing of the application of the said intervenor (*N. B.—There was no such application*), should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable H. F. Severens, District Judge of the United States, this 19th day of September, A. D. 1891.

H. F. SEVERENS,
U. S. Dist. Judge.

XV.

(Citation on appeal of Alfred A. Marcus from the order of April 27th, 1891, refusing his application for leave to intervene and open biddings.)

THE UNITED STATES OF AMERICA.—IN EQUITY.

To Thomas H. Mason and William Hart Smith, partners, doing business under the name of Mason & Smith, and Sullivan Ballou, all of the City, County and State of New York, Greeting:

You are hereby cited and admonished to be and appear before a Supreme Court of the United States, to be holden at Washington, on the second Monday in October next, pursuant to an appeal claimed by Alfred A. Marcus, intervenor, and allowed by the Circuit Court of the United States for the Western District of Michigan, Northern Division thereof, in a cause in equity wherein you are complainants, and the Pewabic Mining Company, Daniel L. Demmon, Alden D. Buttrick, Johnson Vivian, Henry Billings, Thomas H. Perkins and the Pewabic Copper Company are defendants, to show cause, if any there be, why the decretal order made in said cause, by said Court, on the 27th day of April, 1891, upon the hearing of the application of the said intervenor, should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable H. F. Severens, District Judge of the United States, this 19th day of September, A. D. 1891.

H. F. SEVERENS,
U. S. District Judge.

XVI.

The showing laid before Court, establishing the application of *Marcus* for leave to intervene, and open biddings, offering an advance (which application was denied by order of April 27), "to be a *fraud*, he being under many warrants of arrest as a poor debtor, etc."

UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

Thomas H. Mason,
William Hart Smith, and
Sullivan Ballou,
Complainants,
vs.
The Pewabic Mining Company,
Johnson Vivian,
Henry Billings,
Thomas H. Perkins,
Alden B. Buttrick,
Daniel L. Demmon, and the
Pewabic Copper Company,
Defendants.

Affidavit of John B. Fitzpatrick, Showing Furniture of Dwelling House of Marcus Seized for Debt.

I, John B. Fitzpatrick of Boston, in the county of Suffolk, and the commonwealth of Massachusetts, on oath

depose and say that I am, and during the year eighteen hundred and ninety, and long before, was a deputy sheriff within and for said county; that as said deputy sheriff, I served the original writ, of which an attested copy is hereto annexed, marked Exhibit A; that I made the original return, a copy whereof is indorsed on said copy of the writ; that the facts stated in said return and in said copy thereof are true; and that the goods and chattels in said return and copy thereof alleged to have been attached by me by putting two keepers in charge of the same, consisted of the entire household furniture, carpets, books, pictures, and domestic utensils of the defendants not exempt by law from attachment, and situated in the residence of said defendants (*Marcus*), No. 127 Dartmouth street, in said Boston; and that said keepers remained in said residence from September 10 till October 2, 1890, being the period during which said attachment existed, as in said return and copy thereof is more fully set forth.

Witness my hand this twenty-sixth day of March, A. D. 1891.

JOHN B. FITZPATRICK.

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

BOSTON, March 26, 1891.

Then personally appeared the above-named John B. Fitzpatrick and made oath that the foregoing statement by him subscribed is true.

Before me,

NOTARIAL SEAL

EUGENE B. HAGAR,

Notary Public.

The following is a copy of Exhibit A, above referred to:

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

To the Sheriffs of our several Counties, or their Deputies, greeting:

L. S.

We command you to attach the goods or estate of Alfred A. Marcus and Simeon Marcus, co-partners, doing business under the firm name and style of Alfred A. Marcus & Son, in Boston, in said county, and both of said Boston, to the value of seven thousand dollars, and summon the said defendants (if they may be found in your precinct) to appear before our Justices of our Superior Court, to be holden at Boston, within and for our said County of Suffolk, on the first Monday of October next, then and there in our said Court to answer unto Charles A. Morss, of said Boston, in an action of contract to the damage of the said Charles A. Morss (as he says) the sum of seven thousand dollars, which shall then and there be made to appear, with other due damages. And whereas the said plaintiff says that the said defendants have not in their own hands and possession, goods and estate to the value of seven thousand dollars, aforesaid, which can be come at to be attached, but have intrusted to and deposited in the hands and possession of Thomas S. Paterson and John Stetson, both of said Boston, Stanley Paterson and John Paterson, both of the Province of Ontario, in the Dominion of Canada, executors of the will of Thomas S. Paterson of said Boston, said executors having duly appointed Albert E. Pillsbury, of said Boston, as their agent upon whom service of any legal process against them as such executors shall be of the same legal effect as if made on themselves personally within the Commonwealth, and Mary Ann Marcus of said Boston, trustees of the said defendants'

goods, effects and credits, to the said value: We command you, therefore, that you summon the said supposed trustees (if they may be found in your precinct) to appear before our Justices of our said Court, to be holden as aforesaid, to show cause, if any they have, why execution to be issued upon such judgment as the plaintiff may recover against the said defendants in this action (if any) should not issue against their goods, effects or credits in the hands and possession of the said trustees. And have you there this writ with your doings therein.

Witness, Robert C. Pitman, Esquire, Senior and First Justice, at Boston, the second day of September, in the year of our Lord one thousand eight hundred and ninety.

JOSEPH A. WILLARD,
Clerk.

Seal.

Copy Attest.

DANIEL W. BULLARD,
Assist. Clerk.

On the back of said writ, Exhibit A, appears the following: "I certify that the expenses, taxed in my return on this writ, have been incurred, and that the same are reasonable.

JOHN B. FITZPATRICK,
Deputy Sheriff.

Sworn to before me.
DAVID A. SMITH,
Justice of the Peace.

OFFICER'S RETURN, SUFFOLK. } ss.

BOSTON, September 10, 1890.

By virtue of this writ, I this day attached certain goods and chattels as the property of the within named defendants, and on the same day placed two keepers in charge of the same; afterwards on the same day at ten minutes past

four o'clock P. M., I summoned the within named trustees, Stanley Paterson and John Paterson, to appear and show cause at Court as within directed by delivering to Albert E. Pillsbury, Esq., their duly appointed agent, on whom service of process is to be made in this Commonwealth for said trustees, for each an attested copy of this writ; on the same day at 5 minutes past 5 o'clock P. M., I summoned the within named trustee, John Stetson, to appear and show cause at Court as within directed by leaving at his last and usual place of abode an attested copy of this writ. September 13, 1890, at 20 minutes past 4 o'clock P. M., I summoned the within named trustee, Mary Ann Marcus, to appear and show cause at court as within directed by leaving at her last and usual place of abode an attested copy of this writ. September 19, 1890, I summoned said defendants each to appear and answer at court as within directed by leaving at the last and usual place of abode of each an attested copy of this writ, and by reason of the death of the within named trustee, Thomas S. Paterson, I was unable to make service of this writ on him. September 16th, 1890, I moved and stored a certain portion of said property in a place of safe keeping in said Boston, and stayed further proceedings in reference to moving and storing said property by agreement of the within named parties, leaving a keeper in charge of the balance of said attached property. October 2d, 1890, a bond in the sum of Four Thousand Dollars, dissolving said attachment, was filed in the office of the Clerk of the Court, to which this writ is returnable by direction of the plaintiff's attorney; I withdrew my said attachment and returned all of said attached property to and left it where and as I found it.

JOHN B. FITZPATRICK,
Deputy Sheriff.

UNITED STATES OF AMERICA.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION.

THOMAS H. MASON,
WILLIAM HART SMITH, and
SULLIVAN BALLOU,
Complainants,
vs.
THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
HENRY BILLINGS,
THOMAS H. PERKINS,
ALDEN B. BUTTRICK,
DANIEL L. DEMMON, and the
PEWABIC COPPER COMPANY,
Defendants.
} *In Equity.*

WESTERN DISTRICT OF MICHIGAN.

MASON *et al.*
vs.
PEWABIC MINING COMPANY *et als.*

AFFIDAVIT OF JOHN F. BROWN.

(List of Warrants of Arrest as a poor debtor against A. A. Marcus.)

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK. } ss.

MUNICIPAL COURT OF THE CITY OF BOSTON
FOR CIVIL BUSINESS,
March 20th, 1891.

I, John F. Brown, certify that I am the clerk of said Municipal Court of the city of Boston, for civil business,

and that it appears on the records of said Court, that, from the twenty-second day of December, A. D. 1888, to the nineteenth day of March, A. D. 1891, the judgment creditors in the following named actions have severally made application to said Court for a certificate authorizing the arrest of Alfred A. Marcus, judgment debtor; that in pursuance of said applications, notices have been duly served on said Alfred A. Marcus to appear before said Court for examination, as provided in chapter 162 of the public statutes of said commonwealth, relating to poor debtors, and the acts amendatory thereof and supplementary thereto; that certificates authorizing the arrest of the said Marcus aforesaid have issued in many of the following named actions, but it does not appear that the oath for the relief of poor debtors has been administered to him.

List of Actions.

No.	Jud't. Creditors.		Jud't. Debtors.	Amt. of Executions.
274	Grace	vs.	A. A. Marcus et al.	$2,757 95
303	Mass. Title Ins. Co.	vs.	A. A. Marcus et al.	1,029 87
428	Delano	vs.	Same	411 64
534	Hall	"	A. A. Marcus	2,044 12
465	Fowler	"	A. A. Marcus et al.	456 98
751	Dillaway	"	A. A. Marcus	6,001 96
1255	Sharp	"	A. A. Marcus et al.	218 13
1256	Sharp	"	Same	112 30
1257	Sharp	"	Same	112 53
1262	Sharp	"	Same	613 64
1339	Morss	"	Same	618 50
1390	Cochnower	"	A. A. Marcus	299 53
1588	Hayden	"	A. A. Marcus et al.	257 38
1650	Morss	"	Same	618 85
1709	Carey	"	Same	154 80

1728	Horgan et al. vs.	Same	$105 46
1813	Murray "	Same	952 64
1928	Grinberg et al."	Same	803 35
2111	Wellington Coal Co vs.	A. A. Marcus	49 85
2260	Stevens vs.	A. A. Marcus et al.	225 87
2388	Boardman "	Same	102 09
2658	Sharp "	Same	804 17
2698	Thomson "	A. A. Marcus	111 90
2798	Dillaway "	A. A. Marcus	5,501 96
2966	Bailey "	A. A. Marcus et al.	141 71
3703	Hollings et al. "	A. A. Marcus	423 60
3745	Shreve, Crump & Low Co. vs.	A. A. Marcus	848 63
3789	Thomson vs.	A. A. Marcus et al.	174 40
3206	Stevenson "	Same	126 14

JOHN F. BROWN,
Clerk.

(Seal of Municipal Court.)

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } ss.

BOSTON, March 20, 1891.

Then personally appeared the above named John F. Brown, and made oath that the foregoing statement by him subscribed is true. Before me,

EUGENE F. HAGAR,
Notary Public.

(Notarial Seal.)

List of undischarged attachments against Alfred A. Marcus, as follows:

UNITED STATES OF AMERICA.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION.

THOMAS H. MASON,
WILLIAM HART SMITH, and
SULLIVAN BALLOU,
Complainants,
vs.
THE PEWABIC MINING COMPANY,
JOHNSON VIVIAN,
HENRY BILLINGS,
THOMAS H. PERKINS,
ALDEN B. BUTTRICK,
DANIEL L. DEMMON, and the
PEWABIC COPPER COMPANY,
Defendants.

AFFIDAVIT OF CHARLES W. KIMBALL.

A list of undischarged attachments in actions against Alfred A. Marcus, as appears upon the records of Attachments of real estate in the County of Suffolk, Commonwealth of Massachusetts, since the first day of January, 1889.

DEFENDANT.	PLAINTIFF.	DATE.	AMOUNT.
Alfred A. Marcus,	W. C. Hunneman,	Mar. 12, 1889	$900
"	Edmund S. Sparrow,	" 27,	250
"	Edward G. Shattuck,	Sept. 12,	10,000
"	J. W. Skillings,	Dec. 4,	2,500
"	H. S. Crowell,	Dec. 5,	1,000

Alfred A. Marcus,	Hugh Carey,	Jan. 3, 1890	$300
"	H. M. White,	6,	1,500
"	Hugh Carey,	22,	200
"	H. C. Wellington Coal Co.	Jan. 24,	100
"	Otto Sharp,	Mar. 24,	1,000
"	" "	25,	950
"	H. J. Stevens,	Apr. 18,	500
"	D. M. Demmon,	May 15,	10,000
"	J. A. Coran,	"	3,000
"	Otis Shepard,	June 23,	75,000
"	W. R. Clark,	Dec. 22,	6,000
"	J. W. Bailey,	27,	600
"	C. C. Mayberry,	Feb. 13, 1891	1,000
"	C. Adler,	Mar. 19,	1,000

SUFFOLK REGISTRY OF DEEDS, }
BOSTON, Mar. 20, 1891. }

I certify that the foregoing is a true list of attachments against Alfred A. Marcus as above stated.

Attest,

CHAS. W. KIMBALL,
Asst. Reg. of Deeds.

"COMMONWEALTH OF MASSACHUSETTS, }
SUFFOLK. } ss.

BOSTON, Mar. 20, 1891.

Then personally appeared the above named Charles W. Kimball, and make oath that the foregoing statement by him subscribed is true.

Before me,

EUGENE B. HAGAR,

(Notarial Seal.) *Notary Public."*

In view of the foregoing as to the pecuniary situation of Mr. Alfred A. Marcus, consider his petition to the Court below. (Denied April 27, 1891, II above, and order denying appealed from.)

He shows that he is the owner of 300 shares of stock of the company, and intended to be present at the sale, Saturday, January 24, but, being a Hebrew, could not reconcile it to his conscience to bid on Saturday, his Sabbath, and so he telegraphed the master his reasons and an offer of $721,000 (the bid being $710,000), and he says he will bid $800,000 if the sale can be opened, and give bonds. He asks leave to intervene and reopen the sale.

POINTS ON MOTION TO VACATE SUPERSEDEAS ON APPEAL FROM ORDER OF MARCH 2, 1891, CONFIRMING SALE UNDER MANDATE OF THIS COURT.

Point 1.—The appeal was not taken in open Court, nor security filed, nor citation issued within the sixty days limited by statute, and therefore the security given after the sixty days by permission of a justice of the Appellate Court was not operative, and should be vacated on this motion.

The language of §1007 R. S. U. S. is: "But if he desires to stay process on the judgment, he may, *having served his writ of error as aforesaid*, give the security required by law within sixty days after the rendition of such judgment, or afterward with the permission of a justice or judge of the Appellate Court."

The appeal not having been taken in open Court, a citation was indispensable, and the language, "having served his writ of error," is equivalent, in the case of an appeal, to "having taken his appeal in open Court," or served his citation.

The claim of appeal addressed to and delivered to the judge out of court and indorsed with his allowance on June

12, 1891, did not become a part of the files of the Court until July 25, 1891, and was not operative until then.

Peugh vs. Davis, 110 U. S., 229, middle.
Also Credit Co. vs. Ark. Ry, 128 U. S., 261, top.

Seymour vs. Freer, 1866, 5 Wall., 822. Motion to dismiss an appeal.

"What is essential to an appeal is allowance, citation to the appellees or equivalent notice, or waiver, and the bringing up of the record at the next term of this Court."

Kitchen vs. Randolph, 1876, 93 U. S., 86. Motion to vacate *supersedeas*. A decree of foreclosure and sale was entered June 6, 1876. Sept. 29, 1876, the appellant filed his petition for the allowance of an appeal and a *supersedeas*, and on that day an associate justice allowed both, and issued a citation.

"The only question in this case is as to the power of a justice of this Court to allow a *supersedeas* in cases where an appeal was not taken, or a writ of error sued out and served, within sixty days, Sundays exclusive, after the rendition of the decree or judgment complained of" * * * * p. 92. We are therefore of the opinion that under the law as it now stands, the service of a writ of error, or the perfection of an appeal within sixty days, Sundays exclusive, after the rendering of the judgment or the passing of the decree complained of, is an indispensable prerequisite to a *supersedeas*, and that it is not within the power of a justice or judge of the Appellate Court to grant a stay of process on the judgment or decree *if this has not been done*."

Motion granted. (On p. 86 of this case, *Telegraph vs. Eyser*, 19 Wall., 419, *contra*, is distinguished on the ground of a change in the law by the R. S.).

Sage vs. Central R. R., 1876, 93 U. S., 412. Motion to vacate a *supersedeas*.

The decree was entered October 22, 1875. December 16, 1875, an application was made for leave to appeal and denied. February 16, 1876, the defendants applied to Mr. Justice Miller, who allowed an appeal and accepted a *supersedeas* bond. It appeared that the appellants were not parties when the decree was entered, but were admitted as parties for the purpose of appealing, January 14, 1876. The Court says, p. 417: "An appeal was then allowed to them; but they did not avail themselves of it, either by giving a *supersedeas* bond or a bond for costs; and if they had done so it could not have had the effect of a *supersedeas*, because it was not allowed until after the expiration of the sixty days. The order of the Court to the effect that if the bond should be given the appeal might be regarded as taken and perfected December 16, was of no effect for the purpose of a *supersedeas*. While it is true that a Court may enter an order *nunc pro tunc* when the action asked for has been delayed by or for the convenience of the Court (*Perry vs. Wilson*, 7 Mass., 394), it is never done when the parties themselves have been at fault. (*Fishmongers' Co. vs. Robertson*, 3 Manning, Granger & Scott, 974), or when it will work injustice. * * * * No *supersedeas* can follow from the appeal allowed by Mr. Justice Miller, because that clearly took effect after the expiration of the sixty days from the date of the decree. Neither can the order of the same Justice have the effect of the allowance of a *supersedeas* on the original appeal, because, as has already been shown, that appeal was not taken in time. From this it follows that the motion to vacate the *supersedeas* must be granted."

Sage vs. R. R. Co., 1877, 96 U. S., 712. The property in the case last above went on to sale August 31, 1877, on which day an order confirming the sale was entered. On the same day an appeal was allowed in open Court, but the Court refused to accept a *supersedeas* bond. September 15, 1877, appellants applied to a Justice of the Appellate Court assigned to another circuit than that where the judgment was rendered, and that Justice approved a *supersedeas* bond which was filed September 22, 1872.

By WAITE, C. J.: "The statute makes no provision in terms for the form of the appeal (Rev. Stat., Sec. 692); but as there can be no appeal without the taking of security, either for costs or for costs and damages, and this is to be done by the Court, or a judge or justice, the acceptance of the security, if followed when necessary by the signing of a citation, is in legal effect, the allowance of an appeal. If the security is given and accepted in open Court during the term at which the decree appealed from is rendered, no citation is necessary, because the parties, being presumptively present during the whole term, are charged with notice of all that is done affecting their interests. Whenever, therefore, security for an appeal is accepted during the term, an appeal is allowed. If the security is taken out of Court, and after the term a citation should be issued to bring in the parties, unless they voluntarily appear, for, until the security has been accepted, the allowance of the appeal cannot be said to have been perfected.

"Whoever can sign a citation, may allow an appeal; and by Section 999, Rev. Stat., it is provided that this may be done by a judge of the Circuit Court or a justice of this Court. When, therefore, Mr. Justice Hunt accepted the security in this case, he allowed an appeal, which, by reason

of the form of the security, was to operate as a *supersedeas*. No question in respect to a citation arises, because the appellees have appeared.

"The refusal of the Circuit Court to accept a *supersedeas* bond when offered during the term, did not necessarily take from a judge of that Court, of a justice of this Court, the power to approve one thereafter. It is true that the bond accepted in this case recites an allowance of an appeal in open Court; but this is mere surplusage, and does not affect either the appeal or the validity of the bond." Motion denied.

R. R. Co. vs. Harris, 1867, 7 Wall., 574. Motion for a writ of *supersedeas* to the Supreme Court of the District of Columbia. A copy of the writ of error had not been lodged in the clerk's office of the Court below to operate as a service of the writ by the then existing statute. Held, that an essential step had been omitted, and, therefore, the motion denied.

Peugh vs. Davis, 1883, 110 U. S., 227. A decree was rendered in the Supreme Court of the District of Columbia, October 13, 1882, and an appeal was allowed in open Court on the same day. May 10, 1883, Mr. Justice Miller accepted a *supersedeas* bond and signed a citation. It was held "that if *a Court in session, and acting judicially, allows an appeal, which is entered of record*, without taking a bond within sixty days after rendering a decree, a justice or judge of the Appellate Court may, in his discretion, grant a *supersedeas* after the expiration of that time, under the provision of § 1007 R. S. Nothing here said is to be construed as affecting appeals other than such as are allowed by the Court acting judicially and in term-time.".

Covington Stock Yards vs. Kirth, 121 U. S., 248

Motion for a full *supersedeas*. A decree was entered December 22, 1886, and an appeal was had and a bond was filed January 25, 1887, and accepted as a partial *supersedeas* only. Held, denying the motion; "*as the appeal was taken within sixty days after the rendition of the decree*, Mr. Justice Matthews, justice of this Court, assigned to the sixth circuit, has power under § 1009 R. S. to grant, in his discretion, a further stay of execution."

Western Co. vs. M'Gillis, 1887, 127 U. S., 776. Motion to vacate a *supersedeas*. Mr. Justice Miller: "This is a motion to vacate what is called a *supersedeas*. The papers show that the writ was neither sued out nor served within sixty days after the rendition of the judgment which is the subject of the writ of error; it follows, *as a matter of course*, that the writ cannot operate as a *supersedeas*, and we know of no motion that is necessary or proper in this Court on this subject. Writs of *supersedeas* do not issue, unless it may become necessary from some peculiar circumstances. The statutes declares that when, *within sixty days, the plaintiff sues out his writ of error, files it with the clerk of the proper Court*, and then gives a bond within a certain time mentioned by the statute, that the bond, if approved for that purpose by the judge who grants the citation and the writ of error, shall operate as a *supersedeas*. It is a matter of law whether it operates as a *supersedeas*."

Danville vs. Brown, 1888, 128 U. S., 503. Motion to vacate a *supersedeas*. On page 505, the chief justice cites and approves *Kitchen vs. Randolph* (*above*): "This enlarged the ten days to sixty, and permitted sucurity to be given afterwards, *provided*, however, that the writ had been served or *appeal taken* within the sixty days."

Kitchen vs. Randolph, 96 U. S., 86.

In view of the above cases, it is submitted that the motion to vacate the *supersedeas* must be granted.

1. The decree was entered 2d of March, 1891.

2. There was no appeal taken or entered in open Court, and the petition for appeal, dated June 12, was addressed to and delivered to the judge, and not filed in the clerk's office until July 25, 1891 (at which time it first became of record), and the allowance by the judge was filed in the clerk's office July 25, 1891, and no security was taken.

3. The judge refused a *supersedeas* bond (see Mr. Talbot's affidavit) on July 4, 1891.

4. Then the allowance by Mr. Justice Gray, and the signature of the citation did not take place until July 23, and they were filed July 25, 145 days after the decree, and notice was not given of the allowance and filing until July 29, by letter received August 1, at the place of business of appellees in New York (see notice printed above).

5. The claim of appeal presented to the district judge, and his allowance of it, both dated June 12, 1891, more than sixty days from order of March 2 appealed from, did not take legal effect until they were FILED, July 25, 1891.

Credit Co. vs. Arkansas Railway, 1888, 128 U. S., 258–261. Mr. Justice Miller said, p. 261: "An appeal cannot be said to be '*taken*' any more than a writ of error can be said to be '*brought*' until it is in some way presented to the Court which made the decree appealed from, thereby putting an end to its jurisdiction over the cause, and making it its duty to send it to the Appellate Court.

"*This is done by filing the papers, viz., the petition and allowance of appeal (when there is such a petition and allowance)*, the appeal bond and the citation.

"In *Brandies vs. Cochrane*, 105 U. S., 262, it was held

that, in the absence of a petition and allowance, the filing of an appeal bond, duly approved by a justice of this Court, was sufficient evidence of the allowance of an appeal, and was a compliance with the law requiring an appeal to be filed in the clerk's office."

But, of course, this appeal in *Brandies vs. Cochrane* did not operate as a *supersedeas*, because not "*taken*" within sixty days.

Peugh vs. Davis, 1883, 110 U. S., 229. It is held that if a court in session, and acting judicially, allows an appeal, which is entered of record, *in that case* a justice of this Court may take a bond after sixty days.

2. Now as to the delay not being the act of the Court. In *Sage vs. Central Co., above*, 417, a Massachusetts case and an English case are cited as to what act of the Court may be held as causes delay. The following are the cases cited:

Perry vs. Wilson, 1811, 7 Mass., 393. Action of trespass. The cause was submitted for the opinion of the Court at the May term and was then continued *by their order* for advisement; and the defendant Wilson died before the next term, at which term the fact being suggested, judgment was entered as of the previous May term, it being ruled *that when action was delayed for the* convenience of the Court, they would take care that no party should suffer.

Fishmongers' Co. vs. Robertson, 3 Manning, Granger and Scott, 947, 1847. The question was as to allowing a motion of the executor of a deceased defendant to have judgment entered up *nunc pro tunc*. A verdict had been found in favor of the deceased. Negotiations were gone into between the deceased defendant and the plaintiff as to the form of the verdict, when the defendant died before an agreement was reached. The Court said: "I must say I never knew a

motion of this sort to be granted unless when the delay had been the act of the Court * * * We ought to be satisfied that the parties have done all they could to enter their judgment in due time." Motion denied. The delay of the parties was from August 22 to October 27.

Plainly, on the face of the affidavit of Mr. Talbot, counsel for the appellant, the delay arose from the fact that the Massachusetts and Michigan counsel did not pull together, and all of them postponed perfecting the appeal for their own convenience. No act of any judge or any Court postponing, for his or its own convenience, is shown. (See also affidavit of Mr. Dickinson for appellees.)

3. We now pass to the *second* division of the motion, viz., to dismiss the appeal of the Pewabic Co. from the order of March 2, 1891, on three grounds:

(*a*) That the alleged President *pro tem.* and Treasurer of the dissolved Pewabic Co. (who sign the *supersedeas*) have no power to appeal.

(*b*) Because Mason and Smith own a large majority of the stock of the dissolved corporation, and oppose an appeal.

(*c*) Because the *supersedeas* bond recites that *all* the defendants below *except* Billings and Buttrick, who are dead, have appealed, but the claim of appeal (III above) states that the company alone appeal, and also the counsel so notifies appellees (VIII above).

We briefly discuss these grounds separately.

(*a*) The corporation expired (by limitation in its charter of thirty years) April 4, 1883.

The three years given by statute, during which the officers might act in closing the affairs of the corporation, expired April 4, 1886, while this cause was pending here on appeal. This cause was definitely closed here, by decree, Jan. 13, 1890. (133 U. S., 50.)

The former President and Treasurer, and the other officers and directors, ceased to have any official existence or authority whatever at the expiration of the three years, although their existence and authority continued during the three years.

Matthews, Circ. Justice.
Mason vs. Pewabic Co.
25 Fed. Rep., p. 884, middle.

The statute of Michigan (1 Howell Annot. Stat., p. 1244, § 4867) is as follows: "All corporations whose charters expire by their own limitation * * * shall nevertheless continue to be bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established."

It results, manifestly, that the Pewabic company, *as a corporate body*, had no existence or power to take this appeal; and that its former President and Treasurer had no official existence or power to direct such an appeal (which is a new suit), or to affix their alleged official signatures to the *supersedeas* bond. Indeed, one *Stevens* signs the bond as "*Pres. pro tem.*" *There is and can be no such office.*

(*b*) The proposition last above appears more clearly well founded when we look at the fact, reported by the Master (see affidavit of Mr. Dickinson), that Mason & Smith, the appellees, own 22,000 shares out of the whole number of shares, 40,000.

Suppose they owned *all* the shares. Is it not clear that

outsiders, like the alleged officers, Demmon and Stevens, could not, in any way, control the disposition by sale, or otherwise, of the property represented by the stock.

This alleged "*pro tem.*" President and Treasurer, and their alleged associate directors (who now undertake to appeal from the order confirming the sale under the mandate of this Court), also heretofore undertook to carry on the corporate business during the three years (although strictly forbidden by the above law), and this Court has declared them personally responsible, and made them account.

Mason vs. Pewabic Co., 133 U. S., 50, 64.

The stockholders, after the expiration of the three (3) years, are simply *tenants in common* of the mining property. The title resides *in them*, and they alone can control it.

Not only have these former stockholders, now tenants in common, not empowered this appellant to appeal, but the record evidence before the Court shows that the majority oppose the appeal, and are content with the sale and the order confirming it now attempted to be appealed from.

(*c*) The decree below was a joint decree against this appellant, the Pewabic Mining Company, and five (5) individual defendants, two of whom are dead. The claim of appeal recites that *only* the company appeals. But the *supersedeas* bond recites that *all* the six defendants appeal, *except* two who are dead. The representatives of the two deceased defendants have not been brought in, and there has been *no summons and severance*, *i. e.* notice and refusal to join ; as respects the *three other living* defendants. The result is, that this Court has no jurisdiction of this alleged appeal by *one defendant*. In *Owings vs. Kincannon*, 7 Peters, 403, the appeal was dismissed because all parties to the decree below had not joined in it.

In Downing v. McCartney, 131 U.S., Appendix xcviii, held that an appeal by one of three from a joint decree without notice to the others, and without their refusing to join in it, is dismissed.

In the case at bar the claim of appeal and the notification in writing by counsel upon the citation (VIII above) in form the Court that only the *one* defendant appeals. And the bond recites that all but the deceased defendants appeal! In *Smith vs. Clark*, 12 How., 21, it was held that *all* parties must be named in the appeal.

In "*The Protector*," 11 Wall., 82, it was held that the names of *all* the parties must be set forth in the *appeal*, which, not having been done, the appeal was dismissed. (See also, *Miller vs. McKenzie*, 10 Wall., 582; *Masterson vs. Herndon*, 10 Wall., 416; *O'Dowd vs. Russell*, 14 Wall., 402.) It is true that defect of parties is amendable (§ 1005, R. S.) But the discretion is not exercised unless justice demands (*Pearson vs. Yewdall*, 95 U. S., 294), and here the omission of parties is *not an inadvertence*, as the notification (VIII above) shows. *The appeal is shown to be frivolous*, being from an order executing the mandate of this Court in a tedious litigation.

4. We come now to consider the *third* part of the motion, *i. e.*, to dismiss the appeal of the alleged Pewabic Mining Company from the order of 27th April, 1891, on two grounds (additional to that last above, of the non-existence of the company). (1) That an order refusing to open the order of confirmation of 2d March, and let in new bidders as intervenors, is not an appealable order; and (2) that the application of Marcus to open the biddings thus was a fraud and not *bona fide*, on the showing of the appellees printed below.

We here call attention to the fact that this order of April 27 refused the petition of *Marcus* and *not* of the Pewabic Company, *which assumes to appeal from an order to which it was not a party!* (*Subsequently*, September 19, as will be seen below, Marcus himself appealed, seeing this defect.)

(*a.*) The refusal to entertain the application for a re-sale was nothing but a refusal to open the decree of confirmation of 2d March, and to allow Marcus to intervene.

(N. B.) The recitation in the appeal bond on this appeal, that the petition "*being denied, said order of confirmation was made final,*" is not true, as a reference to the order of 27th April (above printed) will show. There is no *reference whatever in that* order to the previous order of March 2, confirming the sale.

Orders like that of April 27 are *discretionary*, and therefore not appealable.

Brockett vs. Brockett, 1844, 2 How., 238. Motion to dismiss appeal. STORY, J. "The next ground is that an appeal has been taken from a refusal of the Court below to open the former decree. * * * It is plain that no appeal lies to this Court in such a matter, *as it rests mainly in the sound discretion of the Court below.*"

McMicken vs. Perin, 1855, 18 How., 507, p. 511. There was a petition in the Court below to set aside a decree, and the petition being dismissed, the petitioner appealed. The Court, Campbell, J., affirmed the decree, refusing to open as one not reviewable, on the authority of *Brockett vs. Brockett.*

Dayton Co. vs. Grant, 1889, 135 U. S., 207. Motion to dismiss, p. 226: The Court, by Mr. C. J Fuller, "the action of the Circuit Court in denying the application of the Dayton Co. *to intervene* and file a petition in review of the order of Dec. 22, 1883, was taken in the exercise of a discretion with which we are not justified in interfering." Citing *Brockett vs. Brockett* (*above*).

Whether biddings will be opened or not (or an order of

confirmation set aside), is necessarily a question of discretion, because it depends upon the particular circumstances of each case.

Mayne vs. Macartney, 2 Irish Eqy., 324.
O'Connor vs. Richards, Sausse & Scully, 246.

A sale is never opened, after confirmation, *for an advance*, but *only* on the ground of fraud, or accident, which is always a question solely for the Court making the order.

2 Dan. Ch. Pr, 3d Am. Ed., p. 1288.
Campbell vs. Gardner, 3 Stockton, N. J., 424, 428.

If the Marcus petition had been granted, and the order of confirmation set aside, then the purchasers who had acquired vested rights by the confirmation might have appealed.

Campbell, J., Demarray vs. Little, 17 Mich., 386, 388.
Blossom vs. R. R., 1 Wall., 656.

But further. The appellant in its answer, and by the testimony of S. L. Smith and others, sought to establish an untruth (to support a proceeding, to wit, a sale by the Pewabic Mining Company to a new company formed by three of the directors, called the "Pewabic *Copper* Company," for the consideration of fifty thousand dollars, which was held illegal by this Court in 133 U. S.), viz., that the property which has now been sold for $710,000 was worth only $50,000.

We now print the allegations of the bill and answer, and the testimony of Smith.

Paragraph XI of Bill in this cause, found on page 9

of the printed Record in this cause (as before this Court in 133 U. S. 50.)

"Your orators further show that, while they have been unable to obtain any detailed description of the realty of said company and its other property, yet they charge and aver that the same is of very great value, and would, at public sale, bring at the very lowest, over $100,000; and they aver on information and belief, that the same is worth in excess of that amount; and yet without and in the absence of such accurate information, your orators hereby offer for the said property $75,000 in cash, for the assets of said company which are proposed to be sold for the sum of $50,000, as provided in said resolution of the meeting of March 26, 1884; and they agree and promise to hold themselves ready to bid that amount at any sale ordered by the Court, and tender herewith security that they will do so."

Paragraph 11 *of Answer*, found on p. 31 of said last named printed Record.

"These defendants further answering say that they are not aware of any inability upon the part of the complainants to obtain any detailed description of the realty of said company and of its other property. * * * That they admit that the same is of considerable value, but estimated at the market price of the stock of said company at the time of said annual meeting, the same was of about the value of $50,000; that they are wholly unable to say what sum it will bring, if anything, if offered at public sale. * * *

Testimony of S. L. Smith, for Company, found on p. 432 of said Record:

Q. "What was the value of the Pewabic property on the 6th of March, 1884?"

A. "I should say from $70,000 to $80,000."

Q. "Over and above the indebtedness?"

A. "No, including its indebtedness."

The printed extracts (XIV above) from the Record, show the *Marcus* application to re-sell to be a *fraud.*

FINALLY.

September 19, 1891, after we had prepared and printed most of the above, we receive the citations now printed above as XIV and XV.

The taking of those two additional appeals by *Marcus*, at this late date after the other appeals, is a substantial confession of weakness with reference to the former appeals which we have considered above.

But these appeals of *Marcus* are no better.

He assumes to appeal both from the order of confirmation of 2d March, 1891 (*printed I above*), and also from the order of April 27, 1891 (*printed II above*), refusing him leave to intervene and object to the report of sale and have a resale.

(*a*) *Marcus* was not a party to the suit, at the time of the order of March 2, and therefore cannot appeal. This is plain. In *Sage* vs. *Central R. R.*, above cited (p. 416, *bottom*), 93 U. S., it is said: "The decree in this case was rendered October 22, 1875, at that time, the present appellants were not parties to the suit, and consequently could not appeal."

(*b*) As to the appeal of Marcus from the order of 27th April, the authorities in this court cited above establish that orders refusing leave to intervene and open biddings are purely discretionary, and therefore not appealable.

IN CONCLUSION,

Let us look at the fact shown by Mr. Dickinson's affidavit that the appellees, after confirmation, received a deed from the Master, and then conveyed by deed to "The Quincy Mining Company," a corporation of Michigan, not before the Court, which corporation took and now holds possession (all these facts were before the Court below), and even if held to be *outside the record*, may nevertheless be considered and acted upon in this motion.

Followed in

Dakota Co. vs. Glidden, 113 U. S., 222.

Elwell vs. Fosdick, 134 U. S., 500, 513.

(*a*) First consider the effect of the order of confirmation. By virtue of that order the contract of sale became complete even if we concede that a deed by the master was necessary to transfer the legal title. But we show that the purchasers received that deed from the master, and received it, too, before any of the applications for a re-sale were made, and before leave to appeal was applied for. We also show that before any of these things were done the purchasers at the sale, who were the complainants, conveyed by deed to the Michigan corporation, named the Quincy Mining Company, and delivered possession of the property sold into the hands of said corporation before the application for re-sale was made. As to the completeness of the contract of sale under the order of confirmation, see the authorities cited in the brief in *Camden vs. Mayhew*, 129 U. S., 80, and in Freeman on Void Judicial Sales, Chapter 4.

The mere fact of a greater offer by *Marcus* was not enough, nor showing that there was a good margin for profit. It fully appeared that the purchasers paid full value, cash, more than anybody else would, and also that nobody

except the adjacent proprietors of mines on either side of the property in question (the Quincy and the Franklin) had any motive to buy.

(*b*) Our position is that, after the order of confirmation (and by reason of the order) the control of the court over the proceedings and over the property by summary action was terminated; and that if the defendants allege fraud, or anything else against the sale they can proceed only in a plenary manner by bill.

The whole question was recently examined, with great research, by District Judge Hammond, in *Blackburn vs. Selma Railroad*, 3 Fed. Rep., 696, 697, and he so holds.

(*c*) The complainants had the same right to bid as any one else, and were under no disabilities in this regard: *Hogsett vs. Ellis*, 17 Mich., 363, Christiancy, J.; *Ledyard vs. Phillips*, 32 Mich., 308, Curtis, J.; *Richards vs. Holmes*, 18 How., 148; *Smith vs. Black*, 115 U. S., 308.

But even if this were not so, the Quincy Mining Company, the vendee of the purchaser before the motion was made, or any attempt to set aside the sale was made, or any appeal entered, would hold the property by a good title: *Bank vs. Bank*, 6 Peters, 16; *Guiteau vs. Whiteley*, 47 Ill., 433; *Koontz vs. Bank*, 16 Wall., 202; *Stuart vs. Gay*, 127 U. S., 527.

(*d*) The Quincy Mining Company, under the authorities, will hold the property in any event, having bought while the order of confirmation was in force, and before any appeal or motion to set aside, and not being made a party to this proceeding; and this, even if this Court should set aside the order upon appeal. Consequently this Court will not do a vain and useless thing by interfering with the order of confirmation: *Gray vs. Brignardello*, 1 Wall.,

627; *Foulke vs. Zimmerman*, 16 Wall., 113; *Galpin vs. Page*, 18 Wall., 350, 373, 375; *Davis vs. Gaines*, 104 U. S., 391; *Gordon vs. South Fork*, 17 A. L. Reg., 279; S. C., 2 Abbott U. S., 479, 480; *Cook vs. Circuit Judge*, 70 Mich., 94, 100; Freeman on Judgments, Sec. 484.

(*e*) There is nothing to supersede. As shown above, the contract of sale by the Court is complete; the Court's deed is delivered; the Court's vendee has sold to a third party; and the third party has taken possession. In other words, the order of confirmation has been fully executed and carried out, and nothing remains to be done which can be prevented from being done by a *supersedeas*.

In the third place.

(*f*) We ask attention to the fact that on Jan. 19 last, the defendants applied to this Court for a stay of the sale (Jan. 24) upon the very grounds urged below for setting aside the confirmation and presented on their appeals, and this Court *refused a stay*. We submit that this shows the appeal and the fixing of a bond is frivolous. This litigation is now in its eighth year. Judges Withey, Matthews and Miller, who made the various decrees, are dead. All the appeals covered by this motion are frivolous, not in good faith, and are destitute of merit, and the motions should be granted.

SUMMARY.

The appellant, The Pewabic Mining Company, was a Michigan corporation, whose corporate life expired on April 4, 1884. The statutory period of three years in addition as a time within which it might sue and be sued, and wind up its affairs, also expired more than four years since. *Att'y Gen'l vs. Perkins*, 73 Mich., 303; *Mason vs. Pewabic*, 133 U. S., 50.

The original controversy decided by this Court, *133 U. S., supra*, involved this issue: Whether a sale of all the property of the appellant for $50,000 should be sustained. The hold-over board of directors made such a sale, and maintained throughout the litigation that the property which had now been sold for $710,000, was worth but about $50,000 (p. 53, this brief).

The majority of stockholders are now on record sustaining the complainants, and in favor of the sale (p. 49).

There is no record of any stockholder except Marcus opposing the proceedings since the decision of this Court. Nor of any other stockholder opposing the sale or favoring these appeals.

The mandate directing the Court below to proceed to a sale, and an accounting, went from this Court in February, 1890, but the appellant, through its hold-over directors, succeeded in postponing the sale until January 24, 1891, when the sale was made for $710,000, and was reported to the Court by the special master.

The common order of confirmation was duly entered and served on every party to the cause. Exceptions and objec-

tions to the report were made by the appellant, and all the defendants in the cause which were fully argued and overruled ; whereupon the Court entered the final order of confirmation on March 2, 1891 (I., p. 5).

After the confirmation, Marcus filed a motion to intervene and open the biddings, on the claim that he was a Jew, and, therefore had, as a matter of conscience, refrained from bidding at the long postponed sale of January 24, 1891, which was Saturday. He sets up no fraud or irregularity, and tendered no security or bond, but offered an increased bid if a resale should be ordered.

The responsibility and good faith of Marcus were assailed by a showing from the Court records of Massachusetts, by which it appeared that there were twenty-nine judgments against him, on which applications were pending for his arrest as a poor debtor ; also that twenty attachments were out against his property, and that his household furniture had been in the sheriff's hands, but had been released by the filing of a bond (pp. 30 to 39).

This motion to intervene and for opening the biddings, after hearing, the Court, in its discretion, denied on April 27, 1891 (see p. 6).

No step to appeal was taken until June 12, 1891, more than one hundred days from the date of the order of confirmation (p. 8). No appeal was taken in open Court. There was no allowance of an appeal filed till July 25, 1891, nearly five months after the order sought to be appealed from. In the meantime, the purchasers had demanded from the special master their deed under the order confirming the sale, had received it as was their right. under the rules and practice of the Court, and had resold the property to the Quincy Mining Company, which entered into possession, which it still holds.

There was no citation on this appeal until July 23, 1891.

There is no excuse made for not taking the first step to appeal, much less for not "perfecting" an appeal within sixty days, from March 2, 1891. Mr. Talbot's affidavit (VII) does not show even an attempt to appeal until June (more than ninety days after the order), and from the showing made as to the whereabouts of the Justice of the Supreme Court, the Circuit Judge and the District Judge, the delay cannot be ascribed to the Court (XIII).

As to the appeal from the order of April 27, 1891, there was no allowance of appeal filed till July 25, 1891, and no citation until July 23, 1891, nearly a month too late (XI). The failure to get a bond perfected shown in Mr. Talbot's affidavit (VII) is no excuse for not issuing a citation, the appeal not having been taken in open court.

Even if the order of April 27 were appealable at all, a *supersedeas* cannot be granted in such circumstances. It follows:

(1) That the *supersedeas* on the appeal from the order of confirmation of March 2, 1891, was improvidently granted, and that new rights have intervened by reason of the laches.

(2) That the order of April 27, 1891, was not appealable, and that if it were, the *supersedeas* was improvidently granted.

(3) That all three appeals should be dismissed.

DON M. DICKINSON,
ALFRED RUSSELL.

Office Supreme Court U. S.
FILED.
DEC 14 1891
JAMES. H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 1,340.

THE PEWABIC MINING COMPANY, APPELLANT,

v.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU, APPELLEES.

SAME *v.* SAME.

No. 1,416.

ALFRED A. MARCUS, APPELLANT

v.

SAME, APPELLEES.

SAME *v.* SAME.

MOTION OF APPELLEES TO VACATE SUPERSEDEAS BOND AND TO DISMISS ALL APPEALS.

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BRIEF OF PEWABIC MINING COMPANY AND ALFRED A. MARCUS, APELLANTS.

PRELIMINARY STATEMENT.

This suit was originally brought by Sullivan Ballou, as owner of one hundred shares, and by Mason and Smith, as owners of two thousand five hundred and fifty shares, out of the forty thousand shares of stock of the Pewabic Mining Company. It was brought to restrain and prevent a renewal of the corporate franchise of those stockholders which had been voted by the holders of more than two thirds of all the stock of said company, and

to obtain a compulsory sale of the corporate property. From the outset, the defendants have alleged formally and specifically, as in their original answer, that the real object of the complainants, Mason and Smith, was not to obtain the protection of their interests as stockholders in the defendant corporation; but was to enable themselves to obtain an opportunity to purchase this property at a compulsory sale; that it was not in behalf of their legitimate interests as members of the defendant corporation; but was to procure an outside and illegitimate advantage as purchasers, an advantage foreign, and even hostile to the lawful interests of all the stockholders as such. And the defendants alleged further, that the proceeding was initiated in the interest of another corporation rival to this defendant corporation, to wit, the Quincy Mining Company.

These allegations now appear to be verities of record. Mason and Smith appear now as purchasers, and as sellers to the Quincy Mining Company. Furthermore, the conveyance to Mason and Smith was executed by the special Master who made the sale, not only without any special direction so to do from the court in which these proceedings were had, but in point of fact, while that court, having allowed an appeal from the confirmation of the sale, held under consideration the question of the amount of penalty in a bond to operate as a supersedeas of that order of confirmation, and this too, after the Court had received a petition that such sale be set aside and a new sale ordered, and had fixed a future day for a hearing on said petition, thus plainly entertaining said petition for its full and deliberate consideration; of which petition and orders for hearing, those purchasers had formal notice.

Still further, the time of the sale at which Mason and Smith made their purchase, was fixed on their insistence. A petition of the defendant corporation alleging that a con-

dition of the copper market, highly unfavorable to the sale of mining property, which unfavorable condition the Court had found to exist on Dec. 20, 1890, still continued to Jan. 24, 1891, was denied on the objections solely of the complainants in this suit.

These appellees now come before this court and urge their own premature and unauthorized action in obtaining a conveyance without due authority from the court and in disregard of its deliberations as a reason why a supersedeas of these appellants, even, if lawful, should be vacated.

And further they deny the right of any and all other stockholders to protect their interests from a disadvantageous sale made to said appellees.

Now the appellants are brought before the court by these purchasers at a sale, the decree of which they themselves had the carriage, by interlocutory motions to vacate the supersedeas and dismiss all appeals. The appellants were served with a pamphlet between the covers of which were included the foregoing motions, fragmentary portions of the record and allegations of fact and law appropriate only in a brief, all commingled and without distinct lines of demarcation separating the record from the comments upon the same and the brief. To this the appellants reasonably objected in writing by a letter to the counsel for the appellees, a copy of which is hereto annexed marked "A". Thereupon the appellees supplied in a supplemental pamphlet the portion of the record requested by the appellants.

But they did not, as requested to do, correct their faulty method of printing. They again mingled in one binding and without lines of demarcation, the record, their comments upon the same and a supplemental brief.

These pamphlets as printed by the appellees contain many inaccuracies of statement, some of which the appellants feel bound in justice to their cause to call to the attention of the

court. In the first pamphlet, page 4, at middle, the appellees state that they print the order appealed from and *all* the subsequent proceedings, while it appears upon examination that this pamphlet contains but two of the orders appealed from and but a small portion of the subsequent proceedings, such omitted portions as appellants deemed necessary being supplied in the supplemental pamphlet.

At the bottom of said page 4, it is stated that the order of confirmation was carried into effect before exception or appeal, although the record discloses that an appeal was taken March 10, and was allowed March 17, while the deed to the purchasers was dated March 25. On page 8 of the first pamphlet, a certain paper is designated as "Appeal from order of March 2, 1891," while the writing itself declares that it is an appeal from an order which "became absolute on April 27, 1891." And the second pamphlet (page 8), shows as part of the record another appeal from the order of March 2. Further, the first pamphlet (page 8), represents that appeal as "delivered to judge out of court, June 12, 1891," while the second pamphlet (page 63), shows a claim of that appeal filed in the case June 3, 1891. It also states that it was allowed "out of court," of which there is no evidence. On page 19 of the first pamphlet, in a marginal note, they characterized an appeal of the Pewabic Mining Company as an appeal from an order refusing an application of Alfred A. Marcus, although the claim of appeal shows that it was an appeal from an order denying an application of said Pewabic Company for an order for a resale. In like manner on page 20 the bond in said appeal is misrepresented.

On page 27 of first pamphlet in an affidavit of counsel for the appellees it is stated that after confirmation of the sale made absolute on March 2,

"and before any other motions were made or entered in the cause and before any appeal had been asked for or allowed, Messrs. Mason and Smith, the purchasers, demanded and received of the special master a conveyance of the property of the Pewabic Mining Company in due form,"

while the record showed that a claim of appeal was filed in the cause March 10 (Supplemental Pamphlet, page 8), and that the purchasers were, on March 16, served with an order of notice to appear and show cause why the petition of Mr. Marcus, filed March 11, for an order to set aside the sale should not be granted (Supplemental Pamphlet, page 14), and for repetitions of these inaccuracies see middle page 56, and page 57 (*c.*) (*d.*).

At the top of page 40 of first pamphlet, it is stated that Marcus shows that he is the owner of three hundred shares of stock of the Pewabic Company, while the record shows that he is the owner of three thousand shares (Supplemental Pamphlet, pages 4 and 9). At the bottom of page 51 of first pamphlet it is stated that the Pewabic Company "assumes to appeal from an order to which it was not a party," while the record shows that on April 27 a separate order, which was the order appealed from, was entered ~~May 2~~, denying the application of the Pewabic Company, which order, although drawn by counsel for appellees, was not printed by them until requested so to do by counsel for appellants (Supplemental Pamphlet, page 59). It is further stated in brackets that "subsequently, Sept. 19, Marcus himself appealed, seeing this defect," while in fact both of Mr. Marcus's appeals were allowed on June 12.

Especial attention is called to a certificate of one F. M. Moore, deputy clerk of the lower court, on page 71, Supplemental Pamphlet, who certifies that he has searched the records and finds no record of allowance of date, April 17, of the appeal filed March 10, and to the affidavit of counsel for appellees, on the preceding page, based on said certificate,

that the record contains no entry of the said appeal, while in fact the clerk has not so certified, and the record shows a claim of appeal filed March 10, and allowed March 17 (not April 17, the time certified to by the clerk) (Supplemental Pamphlet, pages 8, 60, 61).

Satement of the Case.

On Saturday, Jan. 24, 1891, the Special Master in the cause sold the Pewabic Mining property at a judicial sale to Thomas H. Mason and William Hart Smith, the complainants in the cause, for the sum of $710,000.

The Master's report of the sale was filed Feb. 4, 1891. On Feb. 7, 1891, a motion was made for confirmation, and on that date an order was entered (contrary to the provisions of equity, rule 83), that the sale stand confirmed unless cause to the contrary be shown in eight days.

On Feb. 13, 1891, exceptions to the master's report were filed, and on March 2, 1891, twenty-six days after the master's report was filed, a final order of confirmation was entered. (The first rule day after thirty days from Feb. 4 was Monday, April 6, 1891.)

On March 3, 1891, Mr. Marcus's first petition, asking to be allowed to intervene and object to the master's report, was filed, no order of notice or to show cause being issued on this petition.

On March 11, Mr. Marcus filed his second petition for leave to intervene and object to the master's report, and offering $800,000 for the property.

On March 13, an order to show cause was filed, hearing to be March 24, 1891, which was served March 16. The date of hearing was by agreement changed to April 8, which time was changed by the Court to April 11 at Detroit, on which date Massachusetts counsel for appellants were in Detroit and prepared to go on with the hearing. The time was again changed by the Court to April 27, at Grand Rapids.

On March 25, after notice to show cause on the petition of Mr Marcus, Messrs. Mason and Smith obtained a deed of the property sold from the special master which was executed without any knowledge or special authority of the Court, and on March 28, Messrs. Mason and Smith gave a deed of the property to the Quincy Mining Company. Meanwhile, on March 10, 1891, all of the defendants then living filed a claim of appeal from the order of March 2, which appeal was allowed March 17. This is the appeal upon which the supersedeas bond was given which the appellees are now seeking to vacate.

On April 22 the Pewabic Mining Company filed a petition, grounded upon the second petition of Mr. Marcus, asking that the sale to Messrs. Mason & Smith be set aside.

On April 27 there was a hearing upon the Marcus petition and the Pewabic petition, and both petitions were denied solely upon the ground that Mr. Marcus had been guilty of laches, and separate orders were made, from which orders appeals were claimed immediately in open court on behalf of Mr. Marcus and the Pewabic Mining Company and other defendants. The Court intimated that he had some doubts as to these orders being appealable, and the counsel for Messrs. Mason and Smith having stated that they desired to be heard by brief upon that point, the Court requested the appellees to file their claims of appeal, and to submit briefs as to the orders being appealable and the rights of Mr. Marcus to an appeal.

Briefs were prepared and submitted, and on June 3, 1891, claims of appeal by Marcus and the Pewabic Mining Company from the orders of March 2 and April 27 were filed, all of which were allowed after notice to the opposing counsel on June 12, and the penalty of the bonds to operate as a supersedeas was fixed at $150,000. The court had stated at the hearing on April 27, that a bond simply for appeal

with a penalty of $2,000, would be accepted in case the appeal was allowed.

On July 23 Mr. Justice Gray, at Boston, approved supersedeas bonds upon the appeal of the living defendants from the order of March 2, and of the Pewabic Mining Company from the order of April 27, and signed citations which were filed July 25.

For convenience in noting the dates and sequence of events the following chronological table is prepared: —

CHRONOLOGICAL TABLE.

1891.		
Jan.	24.	Sale by Special Master.
Feb.	4.	Master's report of sale filed.
"	7.	Motion for confirmation of sale unless cause shown against in eight days.
"	7.	Order to show cause issued on motion.
"	13.	Exceptions of defendants to Master's Report.
March	2.	" " " overruled and sale confirmed.
"	3.	First petition filed by Mr. Marcus.
"	10.	Defendants filed claim of appeal from order of March 2.
"	11.	Second petition filed by Mr. Marcus.
"	13.	Order of notice issued.
"	16.	" " " served on Mason & Smith.
"	17.	Appeal filed March 10 allowed.
"	24.	Hearing on Marcus petition postponed by consent to April 8.
"	25.	Mason & Smith receive deed from Special Master.
"	28.	" " give " to Quincy Mining Company.
April	8.	Hearing on Marcus petition postponed by court to April 11 at Detroit.
"	11.	Hearing on Marcus petition postponed by court to April 27 at Grand Rapids.
"	22.	Petition of Pewabic Mining Company filed.
"	27.	Hearing on petitions of Mr. Marcus and Pewabic Mining Company.
"	27.	Order denying petition of Pewabic Mining Company.
"	27.	" " " " Mr. Marcus.
"	27.	Claiming of appeals by Mr. Marcus in open court.
"	27.	" " " " Pewabic Company.
"	30.	Order fixing penalty of appeal of March 10 at $200,000.
June	3.	Briefs submitted on right of appeals.
"	3.	Claim of appeal filed by Pewabic Mining Company and Mr. Marcus.
"	12.	Claim of appeal allowed, penalty of supersedeas fixed at $150,000.
July	23.	Supersedeas bonds upon appeals from orders of March 2 and April 27 accepted and citations signed.
"	25.	Supersedeas bonds filed.

Points.

1. As to the validity of the supersedeas bond given upon the appeal of all the living defendants from the order of March 2, confirming the sale.

2. As to the disability of the Pewabic Company for the purpose of taking appeals, and the effect of the fact that at the time of the appeals Mason & Smith owned a majority of the stock.

3. As to the orders of April 27 not being appealable.

4. As to the alleged fraud of Marcus and as to his appeal and that of the Pewabic Company, from the orders of April 27 being frivolous.

I.

The claim of appeal was filed in court, March 10 (Supplemental Rec., page 8), and the appeal was judicially allowed in term time on March 17 (Supplemental Rec., pages 60 and 61) (also see letter of Judge Severens hereto annexed, and marked "B"), within sixty days of the order appealed from, and Mr. Justice Gray accordingly properly allowed the supersedeas bond in the exercise of his discretion.

The case of *Peugh* v. *Davis*, 110 U. S. 227, cited by appellees, is conclusive on this point. This was a motion to vacate a supersedeas upon an appeal because no appeal was perfected within sixty days after the rendition of the decree appealed from. At the foot of the decree was entered the claim of appeal and the allowance thereof. The decree was entered Oct. 30, 1882, and Mr. Justice Miller granted a supersedeas May 10, 1883. The motion was denied on the ground that, —

> "If a court in session and acting judicially allows an appeal which is entered of record, without taking a bond within sixty days after rendering a decree, a justice or judge of the appellate court may, in his discretion, grant a supersedeas after the expiration of that time, under the provisions of Sect. 1007, of the Revised Statutes."

The Court, Mr. Chief Justice Waite, said "in *Kitchen* v. *Randolph*, 93 U. S. at 92, it was held that, — the service of a writ of error or the perfection of an appeal within sixty days, Sundays exclusive, after the rendering of the judgment or the passing of the decree complained of, is an indispensable prerequisite to a supersedeas, and that it is not within the power of a justice or judge of the appellate court to grant a stay on the judgment or decree, if this has not been done.

In referring to this case at the same term, in *Sage* v. *Central Railroad Company*, id, 416, it was spoken of as holding that, unless the writ of error was sued out and served or the appeal taken within the sixty days, no supersedeas could be allowed. It thus appears that the words 'perfected' and 'taken' were used interchangeably, and were evidently intended to mean the same thing as 'allowed.' The rule established by these cases, when accurately stated, is therefore, no more than that to give a justice or judge of the appellate court authority to grant a supersedeas after the expiration of the sixty days, a writ of error must have been issued and served, or an appeal allowed within that time."

This case effectually disposes of the claim that the serving of a citation is a prerequisite to the granting of a supersedeas after sixty days from the rendering of the decree appealed from.

In *Covington Stockyards Co.* v. *Keith*, 121 U. S. 248, which was a motion to this court for a full supersedeas where a partial supersedeas had already been granted by the court appealed from, the motion was denied on the ground that : —

"As the appeal was taken within sixty days after the rendition of the decree, Mr. Justice Matthews, the justice of the court assigned to the sixth district (the district of the court appealed from), has power under Sec. 1007 R. S. to grant in his discretion a further stay of execution if application to him for that purpose is made."

For fuller arguments of this point, however, the following is submitted : —

The sale of appellants' property made Jan. 24, 1891, was ordered to be confirmed on March 2 following; and the supersedeas now under consideration, is a supersedeas of that confirming order; that is, supposing such order not to have been vacated, for the time being, by certain action of the Court below, which however important in other respects of this case, need not now be considered.

In order that that decree might be superseded it was necessary that an appeal should be taken within sixty days, Sundays excluded, after March 2; that is on May 11, at latest.

The record in print shows, — even under the strictest construction as to what forms part of the record, — a claim of appeal filed in court March 10, (Supplemental Record, pages 8 and 9). And under the same strict construction, it shows that appeal brought to the knowledge of the Court which rendered the decree appealed from, on April 30, and then recognized and acted upon by that Court (Supplemental Record, pages, 60, 61). That this appeal was earlier known and recognized by the Court has been urged and will be urged hereafter. At present it is enough that April 30, as well as March 10, are within sixty days after March 2.

One of the grounds urged in support of the motion to vacate the supersedeas is that the citation was not served within the sixty days just mentioned. (Record, page 2 page 40, Point 1). The movers propound that where a citation is necessary in cases appealed, then the service of the citation is the equivalent and the only lawful equivalent of the service of a writ of error in cases taken up by writ of error.

It is true, that, by law, appeals are "subject to the same rules, regulations and restrictions as are or may be prescribed in law in cases of writs of error." (R. S. Sect. 1012). And it is also true, as stated in support of this motion, that in order to stay process on the judgment in a case at law, the appellant's "having served his writ of error" within such sixty days, is a statute prerequisite (R. S. Sect. 1007).

But a service of a writ of error, in cases at law, is not the equivalent of, nor analogous to, the service of a citation in cases in equity. A writ of error does not, as a citation does, command the party in whose favor was rendered the judgment complained of to appear at the proper time in the

appellate court, if he would be heard in support of that judgment. In fact, it has no mandate whatever to that party. It runs not against that party, but against the judgment: it might perhaps be said that a writ of error runs against the court which renders the judgment. For its mandate is addressed solely to that court, commanding that court to send up for revision a record of its proceedings in the case in which the judgment to be revised was rendered. It "is to operate on the court having the record, and not upon the parties." (*Atherton* v. *Fowler*, 91 U. S. 143, 146). It is served not upon the adverse party, but by filing for him in the clerk's office, that is, where it will come to the knowledge, not merely of the adverse party, but also of the court. (R. S. Sect. 1007). A citation cannot be thus served.

Consequently, in cases at law, the service of a writ of error in no wise dispenses with the necessity of a subsequent citation. (It must be subsequent: it cannot be simultaneous with the service of the writ of error.) While in a case in equity, the technical formality of appeal taken in open court, as well as actual notice or its equivalent, dispenses with the necessity of a citation and its service: in cases at law, there must be the full equivalent of actual notice by citation or otherwise; that is, over and above, and after, the service of the writ of error by lodging in the clerk's office, within the sixty days. (*U. S.* v. *Phillips*, 121 U. S. 254.)

What then, in cases in equity, is analogous to the service of a writ of error in cases at law? Anything which brings the fact of appeal taken, home to the knowledge of the Court which rendered the decree appealed from. An appeal cannot be said to be taken any more than a writ can be said to be brought until it is in some way presented to the Court which made the decree. (*Credit Co.* v. *Arkansas R. R. Co.*, 128 U. S. 258.)

The appeal upon which rests the supersedeas now in question was presented to the Court which made the decree March 10 (Supplemental Pamphlet, pages 8, 9). This was done in good and full form, by filing a claim of appeal in writing with the clerk. This must be held to be the day on which the appeal was taken. (*Polleys* v. *Black River Co.*, 113 U. S. 81, (83).

This claim of appeal came to the actual knowledge of the Court, as early as March 17 (see exhibit "B,") on which day the Court was asked to fix the penalty of a supersedeas bond, on appeal claimed by the fore-mentioned writing on file: and did enter upon the requested consideration. This appears of record and of strict record. The order in writing of April 30, fixing the penalty of the bond, may well recite the request for such action and when it was made. (Supplemental Pamphlet, page 61.)

And on this last named day the Court did fix the penalty of a supersedeas bond, to be given under appeal as already allowed: filing its written order to that effect; thus placing its action upon the record.

What ground of fact then, does this record leave for the assertion that this appeal of March 10, was not presented to the Court which rendered the decree appealed from, until after the expiration of sixty days, Sundays excluded, from March 2, 1891? Before April ended, it was before the Court thrice; to wit, on March 10, March 17, and April 30.

The Supplemental Brief of the appellees (page 72) objects that the record shows no allowance of this appeal. Suppose it does not; and suppose even further, that there was, in fact, no such allowance. If a party have a right of appeal, a want of allowance of his claim of appeal, or even a disallowance cannot deprive him of his right. It is of great convenience, and may be of considerable importance to the appellant, to have his right of appeal recognized in the first

instance, by the Court which can proceed to execute the decree by which he feels aggrieved. An allowance of appeal by that Court is the best form of evidence that the appeal has been presented to that court. It is the most appropriate preliminary to the essential step of an approval of the security to be given on that appeal. But it is not an essential condition to the exercise of the right of appeal. Its presence cannot give validity to an appeal not authorized by law. And its absence cannot invalidate an appeal which the law authorizes.

"The prayer for an appeal in due time, although not then granted by the Court, secures the right, and no delay by the Court in its allowance can impair it." *U. S.* v. *Vigil*, 10 Wall. 423 (428). "In making the appeal, the party exercised a legal right." *Hudgins* v. *Kemp*, 18 How. 530 (535).

"Strictly speaking, nothing ought to have been entered either in the minutes, or on the order book as of the day the decree was passed, except the appeal itself."

(Not even an allowance.)

"For the appeal could not have been allowed on that day." "That it was so prayed is all that is required in this court."

Hudgins v. *Kemp*, ubi supra.

But in this case, there is record evidence of the allowance of this appeal within sixty days, Sundays excluded, after March 10, when the decree was rendered. There is record evidence, satisfactory to the strictest rule, of the allowance of this appeal on April 30. On that day an order of court was filed, fixing the penalty of a supersedeas bond, on an appeal by the defendants "from the order confirming the master's sale and his report thereof;" as an appeal which had been made and allowed before that date. All this appears of record. And it is itself an allowance of appeal at that time, if there had been no earlier allowance.

No formal order of allowance is necessary.

Brandies v. *Cochrane*, 105 U. S. 262.

The taking of security upon appeal, whether to operate as supersedeas or not, is the allowance of an appeal.

Sage v. *R. R. Co.* 96 U. S. 712 (at 715.)
Draper v. *Davis*, 102 U. S. 370 (at 371.)
Brandies v. *Cochrane*, 105 U. S. 262.

In the earliest of these cases (*Sage* v. *R. R. Co.*) the reason for this inference is given, and to this effect: —

"As there can be no appeal without the taking of security, either for costs or costs and damages, and this is to be done by the Court, or a judge thereof, the acceptance of the security, if followed when necessary by the signing of a citation, is, in legal effect, the allowance of an appeal." (Pages 714, 715.)

To the taking of security, the fixing of its amount by the Court which is to approve the bond, is absolutely necessary. The fixing of the amount of the security to be inserted in an appeal bond is merely a step in the process of appeal. It is an act without meaning or purpose, except as such step, save in an appealable case, in which appeal is desired. Where this amount is fixed, and with great deliberation (in the case at bar from March 17 to April 30), upon an appeal claimed, it is an allowance of that appeal. That is, it it is the recognition by a competent authority of the desire and intent of the party to take an appeal, and of his lawful right so to do.

Thus it is that the transcript of record in this case, as printed for use on these motions, shows, as matter of record, that the supersedeas which the Court is moved to vacate, rests upon an appeal formally and duly claimed, brought to the attention of the court which made the decree appeal, and by that court actually and substantially allowed; all within sixty days after the decree was rendered.

But record evidence is not essential to establish the fact of appeal, taken or allowed. It may be established by any other competent evidence. This is plainly declared law. In *Hudgins* v. *Kemp* 18 How. 530, which was a case where

the fact of appeal was shown by an entry in the order book of the court below, this court said: —

"Neither is it necessary to inquire whether the entry made in the order book is to be regarded as a part of the record, or merely a memorandum to preserve the history of the case, by entering the appeal in the book where it is usually found, and would naturally be looked for by the party interested. In either view, this entry was not necessary to give validity to the appeal. [The clerk] "does not certify it as a copy from the record. The appeal is made orally, and the entry usually made on the minutes or in the order book, is to preserve the evidence of the act, and is not necessary to give it validity.

"The act of Congress does not require an appeal to be in writing or entered on the minutes of the court, or to be recorded. It is often made before a judge in vacation, when it cannot be recorded in the order book as a part of the proceedings of the court."

"It is not necessary that all of the steps required to give (page 537), this court jurisdiction should be on file in the court below, and certainly need not appear to be of record in that court."

"We think it evident, therefore, that the want of record evidence in the circuit court that the appeal was prayed would be no ground for dismissal." (page 538).

In that case, this Court recognized as the most obvious instrument of evidence outside of the record, the certificate of the clerk, and declares that where the appeal is made in open court and thus within the official knowledge of the clerk, it is his duty, — thereafter when appeal is perfected, to certify the fact to the appellate court, "*even if no written memorandum of it had been made*;" that is, from memory.

But the opinion cited states that appeal may be made under such circumstances that it cannot be recorded as a part of the proceedings of the court. It may be "made before a judge in vacation." And, when thus made, whose is the best evidence of its making? Who can then certify to its making and allowance, but the judge himself, before whom it was made, and by whom it was allowed?

The letter of Judge Severens to Mr. Ostrander of counsel for the appellant, dated March 17, (Ex. B.), stating that he has "this day endorsed an allowance of the appeal claimed by the defendants in the Pewabic Mine Case," plainly shows what he intended to do, and supposed he had done on that day.

That he accidentally omitted to make such endorsement, cannot affect the right of the appellant. "For the appellant had legal rights, and he cannot be deprived of them by any irregularity in a clerical entry." (*Hudgins* v. *Kemp*, ubi supra), nor by any such irregularity or mere clerical omission in even a judicial entry. (*Hudgins* v. *Kemp*, ubi supra.)

One other doctrine laid down positively in the opinion of Mr. Chief Justice Taney, now under quotation, is pertinent to the present question. It is the doctrine that an appeal could not have been allowed, "until the security required by law was offered and approved."

And yet the enactment (Revised Statutes sec. 1007), authorizing supersedeas, contemplates and expressly authorizes, an appeal to be "taken" *within* a period of sixty days and the security to be given *after* the expiration of that period. It follows that the taking of an appeal mentioned in that provision does not include what this court at December term 1855, deemed an effective allowance. The taking is a mere inchoate act, which may be wholly performed by the party appellant; and such inchoate act the defendants in this case performed on March 10, when they filed their claim of appeal in the court below. Subsequently that inchoate act has been completed, and made valid.

To the objection that the claim of appeal was addressed to the clerk, and not to the Court, the answer may be brief.

It need not have been addressed at all. It is a good claim of appeal, even without any address; and the address may be regarded as surplusage. The address could mislead neither the Court nor the adverse party. It is clear that it did not mislead the Court, even at the outset. And at latest, on April 30, the adverse party must have clearly understood its intent.

The laws of the United States prescribe no set form of claiming an appeal.

In *Hudgins* v. *Kemp*, *ubi supra*, the Court said, pages 537.

"The act of Congress does not require an appeal to be made in open court; or to be in writing; or entered on the minutes of the Court; or to be recorded." "And the law makes no difference, as to the form in which it is to be made, whether it be taken in Court; or out of the Court before a judge. In either case, it may be made orally or in writing. And the only difference is, that this Court has decided that where this appeal is made in open Court, during the term at which the decree is judged, no citation is necessary to the other party."

Justice to the learned judge from whose decree this appeal was taken, requires this further explanation.

The affidavit of Mr. Talbot presented to Mr. Justice Gray, with the application for approval of the supersedeas bonds, was not presented nor made with the purpose attributed, by the counsel for the appellees in their brief: that is, to show delay in these premises on the part of the Court below. The provision which authorizes a justice of this Court to act in such a case, does not condition his authority on the fact of delay on the part of the Court below. That affidavit was not offered to meet any requirement of statute whatever. The counsel for the appellants did suppose that Mr. Justice Gray would desire to know that on their part there had been no culpable delay, and especially nothing savoring of discourtesy to the justice or judges in the Sixth Circuit, which would make it,— not illegal,—but improper and officious, for the justice of the First Circuit to act in the premises. Accordingly on presenting their application an oral statement was made; and at the suggestion of the justice, afterwards reduced to form as the affidavit now in print. Addressed wholly to the personal sense of judicial propriety of the justice to whom it was presented, it is now wholly exhausted of force and vitality.

The point that the now superseded "order of confirmation was executed by deed to purchaser, who deeded to third

parties," if presented in support of this motion to vacate the supersedeas, would not be open in the hearing upon this motion. The question as to how this supersedeas,—if found valid,—is to operate, is not now before this court. Whether certain action of the purchasers at the sale, in question on appeal, is or is not to be affected by this supersedeas, is a question which can be judicially considered only after the supersedeas shall be found to be duly authorized by law. The sole question here and now is whether or not it is so authorized.

But this point is not raised in the motion to vacate the supersedeas, that stating as its only ground "that the appeal bond, and citation were not allowed, issued, filed and served within the time fixed by statute, this delay being the act of the appellant and not of court."

II.

1. As to the ground urged for dismissal, to wit —

"Because the alleged president, *pro tem*, and treasurer of a dissolved corporation have no power to appeal,"

The main force of this objection seems to lie in the word "dissolved," as qualifying the word corporation.

It is in order, then, to show that the Pewabic Mining Company, a corporation established under the laws of Michigan, is not for any of the purposes of this suit, a dissolved corporation, under the laws of that state.

A statute of Michigan provides that: —

"all corporations whose charters shall expire by their own limitation" "shall, nevertheless, continueto be bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, or dispose of or convey their property, and to divide their capital stock." (Rev. Stat. of 1846, Chap. 55, Sect. 8; 1 How. St., page 1244, Sect. 4867.)

Another provision of Michigan law is that: —

"the court in which any suit or proceedings against a corporation which shall have been dissolved by a decree in Chancery or otherwise, shall be pending at the time of such dissolution, shall have power, on the application of either party, to make an order for the continuance of such suit or proceeding, and the same may thereafter be continued until a final judgment or degree shall be had therein." (Rev. Stat., 1846, Chap. 118, Sect, 38; 2 How. St., page 2029, Sect. 8211.)

The charter period, and with it the active corporate life, of the Pewabic Mining Company expired April 4, 1883. This present suit against it was commenced by bill dated March 31, 1884, and was, during the period of three years from the expiration of the charter period, prosecuted to final hearing and submission for judgment: that is, prior to April 4, 1886. On that day the case was under advisement of the court as to final decree. And thirty days after the expiration of the three years in which a partial corporate existence is definitely extended, that is, thirty days after April 4, 1886, to-wit, on May 4 in that year, a decree was rendered against this corporation.

From that decree both parties appealed, and both appeals were allowed. Both were entered in the appellate court, and both, when reached in order (October Term, 1889), were heard. On this hearing the decree against the Pewabic Mining Company was affirmed, and against this corporation with the other original defendants judgment and execution for costs on appeal were awarded.

On affirmance, a mandate having gone down, in all the proceedings of the court below, under the mandate, the Pewabic Mining Company, as such, appeared and was heard as a party. It objected to the allowance of claims against itself. With the other defendants it petitioned for a postponement of the sale of its property ordered for Dec. 20, 1890, it being the only one of those defendants who would be aggrieved by a disadvantageous sale. And its petition was heard and

granted. In like manner it petitioned for a postponement of the sale ordered for Jan. 24, 1891; and this petition was heard and denied.

The sale having been made on this last-named day, and reported to the Court, the Pewabic Mining Company, with the other defendants, filed exceptions against the confirmation of said report, and was heard thereon, being the only defendant actually to be aggrieved by such confirmation. Later, this Pewabic Mining Company, alone of the defendants, applied to have said sale set aside, and a resale ordered, and this application was heard. (See Ex. C.)

No less than three appeals of the Pewabic Mining Company from action in confirmation of the sale of Jan. 24, 1891, have been presented to the Court below and allowed, one originally joint, and the other two each taken by this company alone. And finally, two supersedeas bonds, in which the Pewabic Mining Company is sole principal, have been presented for approval; have been approved, and filed in the case.

Upon the foregoing statement, it is respectfully submitted, that by the action of the court below and of this court from the commencement of this suit to its latest stage, the Pewabic Mining Company has been recognized as a corporation existing with full power to defend this suit, and competent to perform all the functions, and to exercise all the privileges of such defendant, and that such *prima facie* continued existence is so plainly authorized by the cited provisions of Michigan law, that further argument of this question is not necessary on this motion to dismiss. If there be any further question thereof, it should be postponed to the final hearing of this case on its merits.

Indeed, there are strong reasons why the Court should decline to consider, upon these interlocutory motions, this very final question of the capacity of this appellant corporation to take an appeal.

For the assertion of such incapacity does not rest upon any dissolution of the corporation, alleged to have taken effect since the last action of the Court below against this appellant as a subsisting corporation. If this corporation is now completely dissolved and extinct, it was so in 1890, when the mandate of this court went down directing proceedings against it as an existing corporation. Accordingly, if now this Court is to pronounce it a dissolved corporation, it must deem all those proceedings as unauthorized, and therefore null and void.

Mumma v. *The Potomac Co.*, 8 Peters, 281 (285, 286).

That this appellant is no longer capable of litigation is a conclusion of law to which no proper effect can be given upon the motions now before the court. Upon these motions this Court cannot direct all the proceedings of the court below against this appellant to be vacated, leaving the appellees to pursue their remedies against such parties as will be left liable to their proceedings, when the Pewabic Mining Company is found no longer capable to be a litigant. Yet this is the proper effect to be given to the conclusion that the Pewabic Mining Company became absolutely dissolved and extinct as a body corporate and politic, on the expiration of three years from the close of its charter period; that is, on April 4, 1886.

If the court below has, since the mandate went down, been proceeding against a defendant legally incapacitated from taking and perfecting an appeal, incapacitated by want of legal existence, then those proceedings must be vacated; and the Court must stay its hand until a proper defendant or proper defendaats can be brought before it; defendants who can defend, even in the court of last resort. And, as before said, this is a disposal of this case not proper to be made upon any interlocutory motion.

But the question whether the Pewabic Mining Company has been, for any purpose, a subsisting corporation since April 4, 1883, and again, since April 4, 1886, being a question depending upon Michigan law; is therefore one which the Supreme Court of Michigan is peculiarly competent to decide. And that court has decided this question; tacitly, it is true, but none the less plainly. This in the case of the *Attorney General* v. *Perkins*, 73 Mich. 303.

This was a case on information in the nature of a writ *quo warranto*, alleging against the defendants a usurpation as pretended corporators of the Pewabic Mining Company. The defendants in their answer set up a renewal of the corporate existence of the Pewabic Mining Company whose charter period expired April 4, 1883, that is a renewal of the existence of this appellant corporation; such renewal having been effected as they said, Feb. 4, 1888, alike after April 4, 1883, and April 4, 1886. This renewal was effected, under a statute of Michigan of March 19, 1887. And that statute, in terms, allowed such privilege of renewal only to a corporation whose dissolution had not become complete, to something which still had some spark of corporate vitality.

The point was distinctly made by the relators in their argument, that the Pewabic Mining Company was not entitled to the privilege opened by the statute of 1887, because not within its descriptive terms; because, long before Feb. 4, 1888, by April 4, 1886, at latest, the Pewabic Mining Company had lost all its corporate vitality; had become totally dissolved and extinct. This position was taken by the relators in their argument, and was met and fully argued in behalf of the respondents in their reply. It was a position, which, if sustained, easily swept away the whole case of the respondents. The whole dependence of the respondents was upon the statute of 1887: if they were not within its descriptive terms, they were certainly without warrant for

their corporate character. A decision against them, upon this point would have been very simple and of very limited scope, a decision against the Pewabic Mining Company alone.

And this simple decision the Supreme Court of Michigan refused to make: no hint of it appears in their opinion. They choose rather to decide that the Legislature of Michigan, under the Constitution of Michigan, had no power to authorize the renewed corporate existence of a corporation (except municipal), which had already enjoyed a corporate existence for one period of thirty years. This whether the privilege of renewal were exercised before or after the expiration of its charter period. And in deciding this that court decided two statutes of Michigan to be unconstitutional and void. They preferred to do this, rather than to decide that the Pewabic Mining Company had ceased to exist as a corporation on or before Feb. 4, 1888.

And if this company had not ceased to be, for absolutely all purposes, a body politic and corporate, in 1888, it has not so ceased since. If it had any spark of corporate vitality then, it has that spark of vitality now. All the vitality it had then was as litigant in this suit; and this suit still continuing, it has still that vitality, which is the full vitality of a litigant, full power to receive judgment in its favor, and to suffer judgment against it, and as to such judgments full capacity to submit to, or take, appeal; to exercise all the functions of appellee or appellant.

And this decision of the Supreme Court of Michigan was undoubtedly correct. The true principle ruling this question is to be found stated by the Supreme Court of Maine in *Hunt* v. *Col. Ins. Co.* 55 Me. 290, which was a case touching a corporation of New York, in these words: —

"If by law or usage in the Courts of New York, where the judgment was rendered, the corporation may still be a party of record, and suits maintained or defended in its name, though its affairs there are

under the guardianship of the servants of the Court; it must be considered as having a qualified existence so long as judgments can be rendered for or against it in the Courts of that State."

And this Maine opinion has strong support in *Colchester* v. *Seaber*, 3 Burr, 1866; *Rex* v. *Passmore*, 3 D. & E. 199; *Berwick* v. *Alpena Co.* 39 *Mich.* 700 (708, 710).

The Michigan court declares that this statute provision continues a suit "in full vitality:" the vitality referred to being that of the corporate party to the suit. That is to say, it holds that for the purposes of the continued suit, the corporate party retains its "full vitality" as a corporation. For those purposes its dissolution is postponed till the termination of the suit; is meanwhile deprived by statute of all its usual effect in this suit: and made as though it never had taken place. Upon the capacity of the corporate suitor thus continued, the continuing statute lays no restriction. It prolongs that capacity, not by specifying some particular capacities which shall survive the partial dissolution but by providing for the continuance of the suit; and such a prolongation carries not one, but all the capacities of a suitor: his "full vitality" as the State court declares. It prolongs the liability (as in that case) to be an appellee; and if the liability to be an appellee, then, of course, the privelege of being an appellant. And if the statute has prolonged the capacity of the corporate party to take an appeal, without laying any limitation upon that capacity, it carries with it as one of its necessary incidents, or rather as among its component parts, the authority to assume and perform all the conditions under which the right of appeal is to be exercised.

In this Michigan case the Supreme Court of that State gave a construction to the statute now in questson, to the second of the before cited provisions. This provision first enacted in 1839, is here cited as Sect. 38 of Chap. 118 of the R. S. of 1846, and as H. § 8211: by the Supreme Court in this cited case as Sect. 6623 of the Compiled Laws of 1871.

In this case, more than three years after the corporate existence of a corporation was annulled, a decree was rendered in its favor, and of this action the Supreme Court says: —

"There can be no doubt, under §6623 of the Compiled Laws, if that section is applicable, of the duty of the circuit court and of this court to consider this case as in full vitaltiy. That section is express, that a suit pending at the time of the dissolution of a corporation, shall continue to final judgment or decree."

"The Compiled Laws of 1871, show a manifest intent to keep alive all causes of action and to allow them to proceed in the corporate name *after any interval of time*. There can be no doubt of the powers of the corporation to commence legal proceedings in its own name, at any time during the three years, and to continue them to a close, unless superseded by trustees or receivers."

"There is, therefore, nothing to prevent the continuance of these proceedings either in the circuit or in this court, or to interfere with their enforcement in the name of the corporation."

This was the construction given by the highest court in Michigan to a statute of Michigan; and this construction governs in the application of this same statute to the question now under consideration.

And aside from the opinion, the mere course of the case itself is controlling of the question now at bar. An appeal was allowed from a decree in favor of a corporation as fully dissolved as is now the Pewabic Mining Company.

Could it be claimed that the dissolved corporation itself would not have been allowed to appeal, had it felt itself aggrieved by the decree?

And if competent to take an appeal was it not of legal capacity to take all the steps, and to assume all the obligations necessary to perfect that appeal?

In short, this part of this motion resting solely upon a simple provision of the Michigan statutes, to wit, "the three years clause," ignores another provision which governs in this case, that provision which, as construed by the Michigan court, under certain conditions allows actions, "to proceed in the corporate name after any interval of time."

2. As to this ground: "because the claim of appeals recites that the company alone appeals."

This ground no longer rests in even apparent fact. The claim of appeal upon which the appellants rely, is to be found in the second point (Supplemental Pamphlet, page 8, III). It is a claim of appeal by the Pewabic Mining Company and other defendants.

3. As to the last ground: —

"Because the record shows Mason and Smith own a large majority of the stock of the dissolved corporation, and oppose appeal."

To this, it would seem sufficient to reply that the record does not show as here alleged. Mr. Dickinson's affidavit appearing for the first time in this print is no part of the record, though it attempts to state what is alleged in some papers filed in the case. But if the record did show that original complainants, now purchasers, of the corporate property, own a majority of the stock of the dissolved corporation, that fact would be no good reason even, on final hearing, for affirming the decree appealed from. Still less would it furnish cause for dismissing an appeal upon motion.

A minority of shareholders, and even a single shareholder of a single share, is entitled to protection against a disadvantageous sale of the corporate property. He is so entitled, even though the sale which is inequitable and to his loss, works to the advantage of the majority of the stockholders as purchasers.

This suit was instituted, and this sale has been ordered on a bill brought by a very small and insignificant (in number) minority of the shareholders of the Pewabic Mining Company; and that minority is no more entitled to the protection of the court, or of the law, than any other minority.

Furthermore, it now appears that as against other shareholders, Mason and Smith now assert their right to appear

in this case, in three characters. (1) As complainant shareholders demanding an order of sale of the corporate property; (2) As purchasers at that sale benefitted by a low purchase price. (3) As defendants entitled to prevent the question of the fairness of the sale, or inadequacy of the purchase price, from being heard on appeal.

This fact, certainly, makes it very important for this court to consider, whether the first and second of these characters, — leading as they do to the third, — are not in equity wholly incompatible. And this is a question which can be properly heard and determined only on final hearing; and the appearance of this question in this case, of itself raises a strong reason why this case should be retained for argument on the merits, instead of being dismissed on this motion.

Further the bill in this case showing that these complainants, at the expiration of the charter of the defendant corporation, owned a very small minority of the stock; it is sufficient, against their claim of a present ownership of a majority of the shares, to suggest that no transfers of stock of a corporation whose charter has expired, are valid in law.

III.

It is contended by the appellees that the orders of April 27 are not appealable. They are orders denying petitions which allege that the purchasers at the judicial sale of the Pewabic property were the plaintiffs in the case and as such had the carriage of the decree of sale, that the plaintiffs bid at the sale without authority from the court, and that the property was sold for an inadequate sum; and offering an advance of more than ten per cent. in case a resale of the property were made. (Supplemental Pamphlet, pages 9, 10, 11, 15 and 16.) It is submitted by the appellants that the order of March 2, 1891, confirming the sale of Messrs. Mason and Smith was prematurely made, and that on March

11, when Mr. Marcus filed his second petition the sale had not been duly confirmed. Under Equity rule 83, the master's report of the sale could not properly be confirmed until the next rule day after the expiration of one month from the date upon which the report was filed in court. This report was filed February 4, 1891, the decree of confirmation was entered on March 2, 1891, less than a month from the date on which the report was filed in court.

The first rule day on which, under Equity rule 83, the master's report of the sale could regularly have been confirmed was Monday April 6, 1891.

Even if this were not so, the petitions for a resale, having been filed and entertained by the Court, during the term in which the decree *nisi* confirming the report of the sale was entered, that decree was thereby suspended, and did not take effect until April 27th, when the petitions for a resale were passed upon by the Court. In *Brockett* v. *Brockett*, 2 How. 638, a petition to reopen a final decree was filed during the term in which the decree was made. The motion being overruled, an appeal was taken, which was opposed, on the ground that the decree should be as of the date when first made, and that the appeal was unseasonable.

The Court, Story, Justice, said: —

"But the short and conclusive answer to this objection is, that the final decree of the 18th of May was suspended by the subsequent action of the Court (in entertaining the petition to reopen), and it did not take effect untill the 9th of June (when petition was dismissed").

In *Railroad Company* v. *Bradleys*, 7 Wall. 575, which was a motion to dismiss and for a supersedeas, it was set up in defence to the motion for supersedeas, that the appeal was not filed and approved within ten days after the decree.

The Court, Chase, C. J., said: —

"The decree was entered on the 6th of February, 1889. A petition for the suspension of the order of dissolution was filed by the secretary of the complainant on the same day; a motion to the same effect

was made in behalf of the Department of War on the 11th. of February, and a petition to open the decree was filed on the 13th of February by one of the stockholders of t e company. We do not think it necessary to consider the effect of either of these proceedings; for on the 6th of March, and as we understand, during the term at which the decree was rendered, a motion to rescind was made in behalf of the complainants, and was heard and decided. There is no doubt that during the term the decree was at all times subject to be rescinded or modified upon motion, and cou'd not therefore be regarded as absolutely final, until the end of the term. It became final in this case when the motion to rescind had been heard and denied."

The record discloses that the first rule day upon which the decree of confirmation could be made final was Monday April 6th, twenty-six days after Mr. Marcus had filed his second petition; and that Mason and Smith did not receive a deed from the special master until March 25th, 1891, fourteen days after the filing of Mr. Marcus's second petition, and eight days after they were served with a notice of the same.

It thus appears that the offer of Mr. Marcus of an advance of more than ten per cent. in case of a resale was made before the sale was duly confirmed. Orders denying such petition are held appealable by the English Chancery practice, even after the confirmation of the sale.

Barlowe v. *Osborn*, 6 H. of L. Cases 555.
Lefroy v. *Lefroy*, 2 Russ. 606.
Power v. *Power*, 3 Ir. Eq. 511.
Gorman v. *Brown*, Sau. and Scull., Ir. Rolls 150.

Orders similar to those of April 27, have been held by this court to be appealable.

In *Blossom v. Railroad Co.*, 1 Wall. 655, a bidder at a judicial sale which was suspended after the appellant's bid and never actually proceeded further, prayed to have the sale completed and affirmed. From the order of refusal he took an appeal, — the present suit. A motion was made to dismiss the appeal upon the following grounds.

1. That the appellant was not a party to the suit and therefore not entitled to prosecute the appeal.

2. That his right had accrued in the mere process of executing the final decree; and that accordingly no appeal lay.

3. That the refusal of the District Court to confirm or complete the sale was a matter within its discretion.

But it was held that the appellant had become a party to the proceedings; that the order of refusal was a final decree and that the decision of the lower court involved the merits of the case, and required such an examinination of the whole record as would only be made on a full hearing, and accordingly the motion was dismissed.

Delaplaine v. *Lawrence*, 10 Paige's Chan. 602.
Calvert Parties to Suits in Eq., page 51, 58, note, page 61.

Whether or not the sale had been properly confirmed; and in case it had, whether or not the whole record discloses fraud or other facts sufficient to warrant the court to order a re-sale, are questions of law and fact to be determined upon the merits of the case as disclosed by the record and are not matters resting in the discretion of the court.

In *Butterfield* v. *Usher*, 91 U. S. 246, which was an appeal from the Supreme Court of the District of Columbia from an order granting a resale after confirmation, it appeared that the defendant was allowed an appeal to the general term from a decree dismissing his petition for a resale upon an advance bid; and that on appeal the resale was ordered although at the time when the petition was filed the sale had been absolutely confirmed.

See also *Tripp* v. *Cook*, 26 Wend. 143.

The action of the court below, of April 27, is certainly appealable, if that action is substantially a final decree. And

it is equally certain that there was in this case, a final decree of the court below, confirming the sale of the property of this appellant, either on March 2, or on April 27. On which of those days the final decree was made, is not a question which is proper to be raised or decided, on a motion to dismiss either appeal. In *Hill vs. Chicago & C. R. R. Co.* 129 U. S. 170, it was held that it was not proper on a motion to dismiss an appeal from a decree of July1 4, 1887, to decide whether a prior decree was a final decree, or what orders and decrees made by the Circuit Court, prior to the making of the decree of July 14, 1887, can be reviewed here, on the appeal from the latter decree. Those questions can only be considered when that appeal shall come up for hearing on its merits.

The question whether the action of March 2, or of April 27, was the final decree to be appealed from was one which the appellants, in appealing, were not required to decide. They had the right to secure their appeal in either alternative, and did so.

Mr. Marcus as an intervening party to the proceedings has the right to appeal from final orders entered since his petition was entertained, in so far as they affect his interests.

In *Sage et al.* v. *Central R. R. Co.* 93 U. S. 412, Mr. Russell Sage and three others owning $200,000 of bonds out of $3,700,000 secured by a trust mortgage to the Farmers Loan and Trust Company, Trustee, were allowed an appeal as intervenors in a foreclosure suit by the said trustees, from a decree of sale entered by consent of parties three months prior to the time when the petition of Sage, *et al.* to intervene was filed, and in the same case reported in 96 U. S. 712, Sage *et al.* as intervenors were allowed an appeal from a decree confirming the sale.

IV.

It is respectfully submitted that the question of good faith on the part of Mr. Marcus is not open on a motion to dismiss, but can be heard only at a hearing upon the merits. However as bearing on the question of fraud, the following facts are stated : —

Mr. Marcus at the hearing on April 27 offered affidavits which were filed in the case, signed by leading business men and capitalists of Boston, and setting forth that they would furnish $900,000 to be bid for the property in case of a resale (supplemental pamphlet, pages 17, 18, 21, 25, 26). Furthermore it appears from Mr. Marcus' petitions (supplemental pamphlet, pages 4 and 9) that he is the owner of three thousand (not three hundred as stated by appellees) shares of stock of the Pewabic Mining Company. In view of the above showing, the showing of the appellees against Mr. Marcus is immaterial.

The ground that the order of confirmation was executed by deed to purchasers who deeded to third parties is not pertinent and the record discloses that it is utterly frivolous. The record moreover shows that the affidavit of counsel for appellees, misstates the facts here in point.

Mr. Marcus' second petition was filed March 11, and notice was served on the appellees March 16. The appellees received their deed from the Special Master March 25, and conveyed to the Quincy Mining Company, March 28.

The circular of the Quincy Mining Company (second pamphlet, page 31) shows that it was fully cognizant of all the facts in the case. The Quincy Mining Company was not joined as a party, because at the time of filing the Marcus petition it had not received a deed of the property.

But the order of confirmation referred to above is not that

of March 2, but that of April 27, 1891; and there is shown no execution whatever of this later order. The latest deed in the printed record bears date of March 28, 1891.

Beside, when in favor of the plaintiff in error even, there has been execution of a judgment (a judgment not wholly satisfactory to him); that fact is not good ground for dismissing his writ of error (*Merriam* v. *Haas*, 3 Wall. 687). Still less would execution of a decree in favor of an appellee be ground for dismissing an appeal.

The record shows two appeals taken from the action of the Court on April 27 (second pamphlet, pp. 62, 63). One of these appeals the counsel for the appellees assert to have been intended as an appeal from the order of March 2 (second pamphlet, p. 73). This is incorrect. They have relation solely to action of April 27, and are intended merely to cover that action whatever might be its form of expression or of interpretation. The appellants well understood that upon examination by this Court there would be found to be but one decree of confirmation open to appeal, and but one valid appeal.

It is important that the Court should note that the motion to vacate the supersedeas is confined to the supersedeas of the order of March 2; that as to the orders of April 27, there is only a motion to dismiss appeals, and not to vacate the supersedeas. Further, that the only ground urged for this dismissal, which can claim even the attention of the Court is, that the action appealed from was not a final decree. Now, as the practice of the Court upon motions to dismiss appeals is not to consider which of two decrees appealed from is final, it would seem to follow that one supersedeas here, to wit, that of the orders of April 27,

must be left in force; and this is a practical reason against vacating the other.

The appellants have annexed to their brief a copy of the letter sent by them to appellee's counsel upon receiving service of the original transcript of record and motion of appellees, and desire to submit to the court the impropriety of the appellees in printing interpolations and comments of their own into the parts of the record submitted by them to the court. The appellants respectfully submit that on their motion the appellees should have furnished to the court a transcript of such parts of the record as were necessary for the determination of the motion, printed and bound by themselves and without the addition of any other matter.

Upon the questions here involved the appellants submit as a summary of their position and claims:

I.

1. That the order of Mar. 2, 1891, confirming the sale of the property of the Pewabic Mining Company was duly appealed from Mar. 10, 1891. That that appeal was duly allowed Mar. 17, 1891. That the due allowance of the appeal was recognized by the court April 30, 1891, and that the supersedeas granted by Mr. Justice Gray July 23, 1891, was duly granted.

II.

1. That the Pewabic Mining Company has continued and still continues to exist as a corporation during the pendency of this litigation which was begun before the expiration of three years from April 4, 1883.

2. That there is no misrecital in claim of appeal.

3. That the extent of the ownership of Mason & Smith in the stock of the Pewabic Company, is immaterial to this hearing.

The fact that the appellants during the pending of this litigation have been able to buy up a large amount of the stock of the Pewabic Company should not affect the rights of the company, acting through its proper officers, to defend the interests of the minority stockholders, and to secure to them the enjoyment and benefit of their property.

III.

1. That the orders of April 27 are appealable both by Mr. Marcus and the Pewabic Mining Company.

2. That Mr. Marcus's application is shown by the record to be without fraud and made *bona fide;* he holding three thousand shares of stock in the Pewabic Company, and therefore largely interested in the result of this litigation, and that he in good faith and with reasonable diligence, and before any valid order of confirmation of the sale had been made, and before the rights of any third parties had intervened, presented to the court an application for a resale of the property, and accompanied it with abundant evidence that upon a resale at least one hundred and ninety thousand dollars additional, and the expense of the resale could be secured for the property.

THOMAS H. TALBOT,
ROBERT M. MORSE,
J. LEWIS STACKPOLE,
RUSSELL C. OSTRANDER,
CHARLES E. HELLIER,
of Counsel for Appellants.

EXHIBIT "A."

SUPREME COURT OF THE UNITED STATES.

PEWABIC MINING COMPANY, *Appellant*,

v.

THOMAS H. MASON ET ALS., *Appellees* (Two Appeals).
ALFRED A. MARCUS, *Appellant*, *v.* SAME.

BOSTON, Oct. 23, 1891.

Hon. ALFRED RUSSELL, Hon. DON M. DICKINSON,
Detroit, Mich.

Dear Sirs, — We received on Saturday last, the 17th, printed copies of motions in the above cases to dismiss appeals taken by the Pewabic Mining Company, and by Alfred A. Marcus, together with written notices from you that the same would be presented to the court "on Monday, the ninth day of September, 1891," together with your brief in support of the motions, and certain extracts from the transcript of the record inserted in your brief. As the date named in your notice had already passed, it is, of course, impossible for us to comply with the notice, and it will be necessary for you to designate another day and give us due notice thereof.

But, aside from the above defect in your notice, we think it proper at this time to call your attention to certain features in the pamphlet sent us, which are, in our judgment, objectionable so that the same may be remedied before the motion is presented to the court. Our objections are: —

1. That the pamphlet does not contain enough of the record to enable the court to act understandingly upon the motions without referring to the transcript.

2. That the extracts from the record are not presented by

themselves but as a part of your brief with various interpolations and comments improperly combined with them.

3. Because unnecessary, irrevelant and incompetent matter is introduced.

1. We understand that the practice of the court requiring so much of the record to be printed as will enable it to act understandingly without referring to the transcript is stated by the Chief Justice in the opinion in *Walston* v. *Nevin*, 128 U. S. 578, and that we comply with the suggestion of the court therein in calling your attention specifically to the additional items from the transcript which, in our judgment, should be furnished.

We consider as necessary for the proper consideration and determination of your motions the following parts of the record and ask you to print and furnish us with copies of the same at the time of sending your new notice for hearing.

(1) Order of Mar. 2, 1891 overruling exceptions and confirming sale of Jan. 24, 1891. (Your 1 p. 5.)

(2) Petition of Alfred A. Marcus, filed Mar. 3, 1891, to be allowed to intervene to object that sale to Mason & Smith be set aside and sale made to Marcus.

(3) Claim of appeal by the defendants, filed March 10, 1891 (allowed March 17, 1891, see recital of April 30, 1891).

(4) Petition of Alfred A. Marcus, filed March 11, 1891, that he may be allowed to intervene and buy, that sale be set aside and that the property be offered for sale.

(5) Order of notice on last petition, filed March 13 1891.

(6) Affidavit of Horace C. Foote, of service of above order of notice on Mason & Smith, dated March 16, 1891.

(7) Motion of Pewabic Company to vacate and set aside the sale of April 22, 1891.

(8) Affidavits of F. V. Parker; I. A. Evans; C. H. Allen; B. S. Evans; H. S. Crowell; C. C. Billings; C. A.

Prince (2); R. E. Demmon; E. E. Pratt; D. L. Demmon; A. R. Whittier; F. G. Storey; Walter R. Dyer; L. L. Fuller; filed April 27, 1891.

(9) Agreement to give $800,000, filed April 27, 1891.

(10) Circular to Quincy Mining Company stockholders, filed April 27, 1891.

(11) Offer to wire $80,000, filed April 27, 1891.

(12) Offer to wire $90,000, filed April 27, 1891.

(13) Indenture of conveyance, Peter White to Thomas H. Mason and William Hart Smith, made March 25, 1891, filed April 27, 1891.

(14) Indenture of conveyance Thomas H. Mason, and William Hart Smith, to Quincy Mining Company made Mar. 27, 1891, filed April 27, 1891.

(15) Order denying application of the Pewabic Company, filed April 27, 1891.

(16) Order denying Marcus petition, filed April 27, 1891 (see your 11 page, 6).

(17) Order that penalty of supersedeas bond be $200,000, filed April 30, 1891.

(18) Appeals (two) claimed by the Pewabic Company June 3, 1891, and request to fix penalty of supersedeas bond (see your 111, pages, 8, 9).

(19) Notice to opposing party of the same.

(20) Request for allowance of appeals claimed and allowance with fixing of penalty of bonds at $150,000,

(21) Supersedeas bond on appeal filed Mar. 10, 1891, of all living defendants from decree of Mar. 2, 1891, and approval (see your IV, pages, 9, 10).

(22) Supersedeas bond on appeal filed June 3, 1891, of Pewabic Mining Company from order of April 27, denying petition of Pewabic Company (see your X, pages 20, 21, 22).

(23) Citations, on supersedeas bond.

2. We object to the method adopted by you of printing

extracts from the record in your brief together with your comments and arguments, and request you to print all the extracts from the record separately from your brief and argument, and in a binding by themselves or with your motions.

3. We object to the presentation of Mr. Dickinson's affidavit as irrelevant and incompetent, and request that it be omitted.

We will add that, in our judgment, the affidavits printed by you on pages 30 to 40 inclusive of your pamphlet are irrelevant to the motion and that if you determine upon further consideration to omit them we will modify our request contained under point 1 above, so far as to omit therefrom the items numbered: —

(8) Affidavits of F. V. Parker and fourteen others;

(9) Agreement to give $800,000;

(10) Circular to Quincy stockholders;

(11) Offer to wire $80,000;

(12) Offer to wire $90,000.

We object also to printing affidavits of Talbot (page 14) Demmon, (page 12), and Prince (page 13) as irrelevant to the argument on your motions.

We shall be glad to hear from you, at your early convenience as to the course you will pursue in the reference to the matters contained in the above letter and shall not of course communicate with the Court until we have received your reply. But we reserve the right to present a copy of this letter to the Court and to make such motion or application as may seem proper.

We remain, very respectfully yours,

Signed) THOMAS H. TALBOT,
ROBERT M. MORSE.

P. S. We are authorized by J. Lewis Stackpole, Esq., of Counsel with us in the matter, to say that he approves of the above.

EXHIBIT "B."

Now comes Thomas H. Talbot, one of the counsel for the appellants in this cause, and says that he is acquainted with the handwriting and signature of Hon. Henry F. Severens, District Judge of the United States for the Western District of Michigan, that he has seen his signature acknowledged by said Judge to be his, and that he, the said Talbot, has examined the handwriting and signature of the letter hereto annexed to R. C. Ostrander, Esq., of counsel for appellants, purporting to be written and signed by said Judge bearing date, March 17, 1891, and that he, the said Talbot, believes said signature to be genuine.

THOMAS H. TALBOT.

BOSTON, Nov. 30, 1891.

Personally appeared the above-named Thomas H. Talbot, and made oath that the above statement subscribed to by him is true, to the best of his knowledge and belief.

Before me, MARCUS MORTON,
[SEAL] *Notary Public.*

UNITED STATES COURTS, JUDGE'S ROOMS.
HENRY F. SEVERENS, *District Judge.*

GRAND RAPIDS, MICH., March 17th, 1891.

Dear Sir, — I have this day endorsed an allowance of the appeal prayed by the defendants in the Pewabic Mine case. In asking me to fix the penalty of the bond, you do not state whether you wish to give a bond for superseding the order, or the common bond for costs, etc. If the latter only, it may be in the sum of $1,000.

If the former, questions of some nicety would arise, and I should wish to hear counsel upon them. In that case, I would attend to it any day on which you could get counsel here.

Yours,

H. F. SEVERENS.

I withhold the citation until the bond is filed.

MR. R. C. OSTRANDER.

EXHIBIT C.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1340.

PEWABIC MINING COMPANY, *Appellant.*

v.

THOMAS H. MASON ET ALS, *Appellees.*

(Two appeals with supersedeas under each.)

ON MOTIONS OF APPELLEES TO VACATE A SUPERSEDEAS AND DISMISS THE APPEALS.

It is agreed that the statements in the brief for the appellants against said motion as to the appearance of the Pewabic Mining Company in the court below, in the proceedings under the mandate, as shown in the extract here following, are substantially correct and appear in the transcript of record of this case.

EXTRACT.

"On affirmance, a mandate having gone down, in all the proceedings of the court below, under the mandate, the Pewabic Mining Company, as such, appeared and was heard as a party.

It objected to the allowance of claims against itself. With the other defendants it petitioned for a postponement of the sale of its property ordered for Dec. 20, 1890, it being the only one of the defendants who would be aggrieved by a disadvantageous sale. And this petition was heard and granted. In like manner, it petitioned for a postponement of the sale ordered for Jan. 24, 1891, and this petition was heard and denied.

Sale having been made on this last named day, and reported to the court, the Pewabic Mining Company, with the other defendants, filed exceptions against the confirmation of said report, and was heard thereon, being the only defendant actually to be aggrieved by such confirmation. Later, this Pewabic Company, alone of the defendants, applied to have said sale set aside and a re-sale ordered, and this application was heard."

But on each and every occasion the complainants objected to the competency of the said company to appear or object or act in any way, for the same reasons now set forth in the printed brief, in this cause.

DON M. DICKINSON, *p. A. R.*,
ALFRED RUSSELL,
For Appellees.

Office Supreme Court U. S.
FILED.
MAR 7 1892
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

IN EQUITY.

No. 1340.

PEWABIC MINING COMPANY, *Appellant*,

v.

THOMAS H. MASON, WILLIAM HART SMITH AND SULLIVAN BALLOU, *Appellees*.

(TWO APPEALS.)

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION.

BRIEF FOR THE PEWABIC MINING COMPANY, APPELLANT.

THOMAS H. TALBOT,
ROBERT M. MORSE,
J. LEWIS STACKPOLE,
RUSSELL C. OSTRANDER,
of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1891.

IN EQUITY.

No. 1340.

PEWABIC MINING COMPANY, *Appellant*,

v.

THOMAS H. MASON, WILLIAM HART SMITH AND SULLIVAN BALLOU, *Appellees*.

(TWO APPEALS.)

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION.

BRIEF FOR THE PEWABIC MINING COMPANY, APPELLANT.

STATEMENT OF FACTS.

The suit in which these appeals were taken was brought by Thomas Henry Mason and William Hart Smith, as partners, owning twenty-five hundred and fifty shares, and by Sullivan Ballou, owning one hundred shares, of stock in the Pewabic Mining Company, a corporation established under

the laws of Michigan, to compel a winding up of the affairs of that company, a sale of its corporate property, a payment of its corporate debts, and a distribution of the net proceeds of sale among the entitled shareholders, and also to require the directors of the corporation to account for money collected by assessments from the stockholders and expended by those directors after the expiration of the charter. The complainants filed their bill "in their own behalf and in behalf of all stockholders who may desire to come in and join herein or take benefit under the decree or proceedings of the court."

From the outset, the defendants have alleged formally and specifically, as in their original answer, that the real object of the complainants Mason and Smith was not to obtain the protection of their interests as stockholders in the defendant corporation, but was to enable themselves to obtain an opportunity to purchase this property at a compulsory sale; that the suit was brought not in behalf of the legitimate interests of the complainants as members of the defendant corporation, but to procure an outside and illegitimate advantage to themselves as purchasers, an advantage foreign, and even hostile, to the lawful interests of all the stockholders as such. And the defendants alleged further, that the proceeding was initiated in the interest of another corporation rival to this defendant corporation, to wit, the Quincy Mining Company, in which the complainants were interested.

These allegations are now shown to be verities of record. Mason and Smith appear now as purchasers, and as sellers to the Quincy Mining Company.

The charter period of the Pewabic company expired April 4, 1883, and the bill in this suit was dated March 31, 1884.

The original decree was dated May 4, 1886. Under this decree this cause was referred to Peter White as special master; and he was directed to "proceed to ascertain the assets

and property and the amount of the debts of said Pewabic Mining Company;" and the decree went on: "After ascertaining the assets and the debts of said company and making a report thereof to this court [the court below], as hereinabove provided, said master shall proceed to sell said property." The decree expressly mentioned said debts as "the debts of said company existing at the time of the sale hereinafter decreed." "After ascertaining the assets and debts of said company," the master was directed to "proceed to sell said property, to the highest bidder, in one body." Upon hearing of appeal taken from above decree, this (Supreme) court (133 U.S. 50) affirmed, with some other directions, the above direction that the assets and debts of the appellant company should be ascertained before its property should be offered for sale; and its mandate of February 6, 1890, went down to the court below to that effect. The affirming decree added to the assets thus to be ascertained another class of assets, to wit, whatever might be found due from the defendant directors upon an accounting. For, while the court below had expressly refused to hold the directors to account for moneys collected upon assessments laid after the expiration of the charter, this court had reversed that portion of the decree below, and had ordered that the directors be required to account. May 6, 1890, the Circuit Court, acting under that mandate, referred the cause to said Peter White, special master, by an order of reference containing this direction: "That said master proceed to ascertain the assets and property and amount of the debts of the said Pewabic Mining Company," and, "That after ascertaining the assets and debts of said company and making a report thereof to this court [the court below] as hereinabove provided, and the confirmation thereof, said master shall proceed to sell said property."

July 23, 1890, the Circuit Court directed the special

master, Peter White, "for the purpose of better ascertaining the debts of said Pewabic Mining Company and the creditors thereof, to make an order fixing and appointing a day on or before which the creditors of said Pewabic Mining Company shall present to, and file with, said master a statement of their several and respective claims against said Pewabic Mining Company, after which day so appointed and ordered, all claims against said Pewabic Mining Company not so presented or filed with said master shall be barred." Of such order the master was directed to give public notice by publication in sundry newspapers. The master, on the following day, July 24, 1890, issued a notice "requiring all creditors of the said Pewabic Mining Company to present their claims against said company at my [his, said master's] office in the city of Marquette, Michigan, on or before the 28th day of August, 1890," and caused the same to be published in sundry newspapers as ordered by said court.

On or before that 28th day of August, sundry claims against this appellant corporation were duly filed with the special master; and thereafter, in support of the same, evidence was duly taken before him, which taking was attended by this appellant, but was not attended by the appellees or by any one in their behalf; this evidence being taken on October 27 and 28, 1890.

But before this evidence was taken, to wit, on September 18, 1890, the special master had reported to said Circuit Court the fact that certain claims (their respective amounts being stated) had been presented; but had reported no finding on his part, of law or fact, as to their allowance or disallowance. This appellant duly excepted to said report, and moved to strike the same from the files of the court, and sundry persons, who had filed with the master claims as creditors against this appellant, also excepted to the report. Among the exceptions thus taken were these: that the master

had not ascertained the matters referred to him; had not ascertained the assets and debts of the Pewabic Mining Company, and specifically had not taken an accounting from the defendant directors. November 4, 1890, said motion to strike from the files of the court the master's report of September 18 was denied; and it was ordered "that so much of said report as ascertains and reports the amount of the indebtedness of the Pewabic Mining Company on the 26th day of March A.D. 1884, be and the same hereby is approved and confirmed," that is, so much as fixed the amount of said indebtedness on March 26, 1884, as a guide for determining the minimum price at or below which the property of this appellant should not be sold, and for no other purpose and to no other effect whatever. Otherwise the exceptions to the report were sustained and the report was "recommitted to the master for further and final consideration of the other matters referred to him, to wit, other than the ascertainment of the indebtedness" on March 26, 1884, for the limited purpose just set forth. That is to say, that report was recommitted in order that the validity of all and each of the claims of indebtedness against this appellant, alike as existing on March 26, 1884, and on any other and later date, might be ascertained and determined in the respective amount of each such claim, the order of court stating that "all questions of any of the parties, with respect to their dealings with the indebtedness of said company or any part thereof, are hereby expressly reserved."

R. 41, 42

While thus recommitting this report because there had been no ascertainment of the debts of this appellant, the order of November 4, 1890, directed a sale of the property of this appellant to take place in six weeks after notice. And thereafter, though sundry claimants petitioned said Circuit Court to make such ascertainment, none had been made

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51-60.

down to the time of the last appeal by this appellant in this case. Nor had the defendant directors been required, or even allowed, to complete their accounting. They had rendered such an account to the special master as early as in August, 1890; but no action whatever thereon appears to have been taken. Thus it was then impossible to sell all the property of the Pewabic Mining Company "in one body" as ordered by the mandate.

The master, however, proceeded to give notice that he would sell the property of this appellant, to wit, on December 20, 1890. But on December 15, this appellant corporation, with its directors, who are defendants in this suit, by petition represented to the said Circuit Court that "a severe financial depression then existed all over the country, and that it especially affected mining stocks and mining property, so that if a sale of said property was had at the date advertised, it would be at a great sacrifice and at a price largely below its actual worth;" and prayed for a postponement of such sale, as "such postponement would materially increase the price bid for such property." The present appellees Thomas H. Mason and William Hart Smith appeared and opposed the granting of said postponemnt. But "after due consideration of the petition and affidavits and the counter showing," the court ordered the sale notified for December 20, 1890, to be postponed to January 24, 1891.

On January 16, 1891, this appellant moved for a further postponement of sale from January 24, setting forth that the financial condition unfavorable to such a sale which the court had found existing on December 15, 1890, still continued. The appellants Mason and Smith appeared in vigorous opposition to said postponement. They supported and strengthened their opposition by presenting to the court the affidavits tending to show that there was no occasion for a dostponement of said sale from January 24, 1891, of Thomas

F. Mason, president, and William R. Todd, secretary, of the Quincy Mining Company, without disclosing to the court the fact that said Quincy Mining Company desired and intended to purchase the property which was ordered to be sold on said January 24; and also the affidavit of the plaintiff William Hart Smith without disclosing the fact that he intended to be, with his copartner, a bidder at such sale.

Upon hearing of evidence and argument, the motion was denied and the sale was left to go on as ordered.

At the sale on January 24, Mason and Smith made the highest bid, that of $710,000, and the property was struck off to them as the highest bidders.

February 4 the special master filed his report; and on February 7, on motion of the solicitors for complainants, it was ordered "that said sale and all things thereto pertaining be and stand confirmed, unless cause to the contrary be shown within eight days from this date," to wit, February 7.

On February 13, this appellant, with the other original defendants, filed their exceptions and objections to the confirmation of said report. The exception that the assets and debts of the company had not been ascertained was then again taken; and further, that the master did not, before making said sale, ascertain what property of the Pewabic Mining Company was to be sold, nor ascertain fully what property then belonged to said company; and still further that, while the master reported a sale of all of the assets, the amount (if any) due said company from the defendant directors had not been ascertained, and that concerning said amount bidders were not publicly informed, so that in the manner of conducting said sale there was opportunity of unfair advantage; and still further, because said report included as sold rights of action determined as well as undetermined; and because it was impossible from said report to know what was sold and

purchased at said sale. March 2, an order purporting to confirm said sale was made.

On the next day, March 3, the appellant Alfred A. Marcus, of Boston, Massachusetts, filed in said court a petition in which he set forth that he was the owner of 3017 shares of stock in the Pewabic Mining Company; that he, for himself and for other parties whom he was willing to disclose, had been desirous and had fully intended to be present or represented at the sale of the property of the said company; that he had been ready to bid and pay, and would have bid and paid, a large amount of money for said property; that on January 23, 1891, he discovered for the first time that said sale was advertised for Saturday, January 24; that this day was the Sabbath of the petitioner, upon which day he was forbidden by his religious creed, as an Orthodox Jew or Hebrew, to do any business; that thereupon, using all haste and despatch possible, he did, on that January 23, send by telegraph a message to the special master asking to have the sale of the property postponed at his own expense, giving the foregoing reason for his petition. Further, that on January 26, which was Monday, the first business day after Saturday, January 24, he sent by telegraph a message to the special master, claiming the right to bid $721,000 for said property; that said offer was *bona fide;* and that he had been on said January 26, and was at the date of said petition, willing and desirous of taking the property at the price named in his said offer. He offered to give bonds with satisfactory sureties to perform in accordance with his petition. Wherefore he prayed to be allowed to intervene in said cause, and to object to the report of the sale, that the sale made on January 24 be declared void, and that the special master be ordered to convey to the said Marcus as highest bidder the said property upon his paying, within a reasonable time, the said sum of $721,000.

March 11, said Marcus filed a further petition in which, after reciting as before stated, he offered, if a resale of said property should be ordered, to pay all expenses incident to such resale, and to bid as a starting bid not less than $800,000, and to give a bond with satisfactory sureties in a sum to be fixed by the court that he would so bid and perform his bid, and he prayed as before. R. 82-86

March 13, the court "ordered that the parties to said suit, complainants and defendants and the purchaser at the master's sale, show cause," on March 24th inst., "why the prayer of said petition of Marcus should not be granted," notice to be served on these parties accordingly. 86.87

March 10, the Pewabic Mining Company claimed an appeal to this court from the order of March 2, purporting to confirm the sale. This appeal was allowed March 17, and on the same day the court was requested to fix the penalty of a supersedeas bond to be given under such appeal. 84 136

Meanwhile the offer of Marcus to make at a resale (if ordered) a starting bid of $800,000 had been made substantial and reliable. So also had a better offer of parties acting with Marcus and appearing in the case with him, namely, an offer to bid $900,000 at such resale, if ordered. Marcus also consented that the resale should be at his expense. Further, he objected that the plaintiffs Mason and Smith, without leave of court, which they did not have, had no right to bid at such sale, and that the master had no right to receive such bid if made. 80 97 97.98 106.107.108 110. 94.95

Under the above order of the court of March 13 to the Pewabic Company to appear and answer in the matter of the petition of Marcus, the company, on April 22 (the hearing above ordered being continued from March 24), filed a motion in support of the petition of Marcus to vacate and set aside the sale of January 24, and to order a resale of the property then sold. 95. 96.

This motion set forth that, under the above order of March 13, the petition of Marcus for a resale had been entertained for consideration by the court, and thus that there was no final confirmation of that sale, but that the question of such final confirmation was still open; that the property did not bring the highest price for which it could be sold by a large and substantial difference; that a sale to two of the complainants in the cause, bidding without permission of the court, was illegal and void; and that the sale had been prematurely made before the debts and assets of the defendant company had been ascertained and before there had been any accounting with the defendant directors.

R. 95.96

This matter, upon the petition of Marcus and the motion of the Pewabic Company, came to a hearing on April 27.

Among the evidence produced at this hearing was a circular addressed to the stockholders of the Quincy Mining Company, dated at its office in New York city, February 26, 1891, and signed by Thomas F. Mason, president of the company, in which it was stated that "at the stockholders' meeting held January 5, 1889," a certain vote was passed, the real intent and purport of which, though this was in no way expressed in the vote, was to authorize and enable the directors of the Quincy Mining Company to purchase the Pewabic property when it should come to sale in this suit.

This vote authorized the directors to issue "10,000 shares of increased stock" "at such times as they may desire, and to direct by vote how this increased stock shall be sold, used, or appropriated for the benefit of the company."

The circular went on to state that a meeting of the directors of the Quincy Mining Company was promptly called after the sale of the Pewabic property to Mason and Smith of January 24, 1891. It further states that Mason and Smith bought that property "for the object of transferring it to the Quincy Mining Company."

111.

It stated the cost of the purchase to Mason and Smith at $800,000, "including all expenses of litigation," viz., $90,000 more than their accepted bid, $710,000. That is to say, as against any other bidder not liable for the expenses of litigation, Marcus for instance, Mason and Smith were at a disadvantage as bidders of $90,000. R. 111

It then states that at this meeting of directors of the Quincy Mining Company held between the sale of January 24 and the date of this circular, February 26, 1891, "it was unanimously voted to accept the offer of Messrs. Mason and Smith to transfer the property to the company, in consideration of the issue to them of the 10,000 shares of increased stock."

April 27, 1891, the court heard the various parties on these matters, and after hearing denied the application of this appellant, the Pewabic Mining Company, to set aside the sale of January 24 and to order a resale, and dismissed the application. It heard and dismissed also the petition of Marcus that the sale of January 24 be declared null and void and set aside and that a new sale be ordered. 136 135

April 27, and not before, the court, in compliance with the request of March 17, fixed the penalty of a supersedeas bond to be given under the appeal of March 10. 137

On the same day (April 27), were filed in court a conveyance, dated March 25, from the special master to Mason and Smith, of the property sold in January, and a conveyance of March 28 from the latter to the Quincy Mining Company. The consideration recited in the latter deed is $710,000, although it appeared, as above, that the real consideration to Mason and Smith was 10,000 shares of stock of the Quincy Mining Company, which were of far greater value. 112-118 118-126

The appellants, being the Pewabic Company and its directors and all of the shareholders not interested in the purchase by Mason and Smith, protest against the validity of

the proceedings by which it has been sought to deprive them of very valuable property for the benefit of the Quincy Mining Company, a rival organization.

SPECIFICATION OF ERRORS.

The appellant specifies the following errors in the decree appealed from, and in the action of the court leading up to that decree; to wit, —

1. That the court below erred in overruling the *first* exception taken by the appellant to the report of the sale of the special master, viz., "That the said sale mentioned in said report was made before the debts and the assets of said defendants, the Pewabic Mining Company, were ascertained as provided for and required in the decree entered in said cause" (Rec. pp. 79, 81).

2. That the court below erred in overruling the *fifth* exception taken by the appellant to the report of the sale of the special master, viz., "Because said property was sold for an inadequate price or sum, and for much less than it is worth" (Rec. pp. 79, 81).

3. That, under the mandate of this court, nothing less than "all the assets and property of the said Pewabic Mining Company" "in one body" could be sold by said master; but that by the order of the court confirming the sale, an exception was made therefrom of the claims against the directors, so that in fact all of said assets and property were not sold in one body (Rec. p. 81).

4. That in disregard of the rules governing the equity practice of the Circuit Courts of the United States, said report was confirmed within one month from the filing of the report in court.

5. That promptly and without laches, and before any con-

firmation of said sale had been made as authorized by the rules governing such practice, and before any confirmation whatever had become absolute, beyond the power of the said Circuit Court to set aside, *bona fide* and well assured offers of a price largely advanced beyond the highest bid at the reported sale were presented to this court in support of an application, from the party so offering and of this appellant, for the setting aside of said reported sale, and the ordering of another sale.

6. That Thomas H. Mason and William Hart Smith, complainants in this cause, bid at said auction, and that their bid, as the highest bid, was accepted by the special master, and the property exposed to sale was struck off to them as purchasers, when —

(*a*) They had not obtained leave from the court to bid at said auction.

(*b*) They had advised the court in the matter of the sale, and pressed forward the sale as parties interested only as sellers to obtain the highest price, and not at all as buyers interested to obtain the property for the lowest sum, and that therefore they had no right to bid.

(*c*) Before so bidding they had concerted with the Quincy Mining Company a scheme to take the property (if bought) off their hands at a very large personal profit; and they did not disclose this fact to the court, in any of their representations to the court, in the matter of the sale, and they procured affidavits from officers of the Quincy Company and presented them to the court, in which this fact was not disclosed.

(*d*) Neither did they disclose this fact of their having secured a sale of this property to the Quincy Mining Company at a large profit, to the master, their fellow stockholders or the other bidders at said sale, nor allow

the same then and there to be disclosed, but concealed the same.

(*e*) On the other hand, while they had obtained this contract and agreement with the Quincy Mining Company, in accordance with which they were to buy this property for the purpose of transferring it to that company, they advised the court that said Quincy Mining Company would, at the auction ordered, bid as an independent bidder, in fair and free competition, and pressed forward the sale for this reason, that if deferred the Quincy Company might not bid, concealing from the court this contract and agreement and all their relations with the Quincy Mining Company in this matter.

(*f*) As a matter of fact, the scheme was carried out. The complainants were both buyers and sellers. They advised the court, made the sale, purchased the property, and resold it at an advance which they pocketed themselves for their own personal benefit, and in fraud of the other stockholders.

7. That as against a bid accepted under all these circumstances, the Pewabic Mining Company, having, for a reasonable time, an undoubted right to elect whether to ratify and enforce the sale, and to demand and receive into its own assets the advance upon the sum bid, which was to be paid to the accepted bidders, or to have the accepted bid rejected, and the biddings reopened, has exercised that right entirely within such reasonable time, and is not guilty of laches in the premises.

8. That the advance price offered to be bid for the property sold, in case a new sale should be ordered, was large enough to induce and require the court to open the biddings and to order such resale, and that such offer was amply secured and guaranteed and was seasonably made for that purpose.

ARGUMENT.

I.

THE DIRECTIONS OF THE MANDATE HAVE BEEN DISREGARDED, IN THAT THE DEBTS AND ASSETS OF THE PEWABIC COMPANY WERE NOT FINALLY ASCERTAINED AND ADJUDICATED BEFORE A SALE OF ANY OF THE PROPERTY OF THE COMPANY WAS ORDERED AND MADE.

1. As to the debts:

In fact, there has been no adjudication in this matter. No claim in favor of or against the company has, to any extent or in any sum, been decreed valid or invalid. In terms, "all questions of any of the parties with respect to their dealings with the indebtedness of the company or any part thereof are hereby expressly reserved," says the court in its order (Rec. pp. 41, 42).

The complainants, in shaping the proceedings under the mandate, seem to have assumed that no such ascertainment and adjudication prior to sale ordered and made are directed by the mandate. They seem to hold that the only intent of the mandate in ordering such ascertainment before sale was in order that the court might be able to fix an upset price to govern in the sale itself; that such ascertainment derived all its significance and value from this condition, found in the first paragraph of the original decree, to wit, "If at such sale the bid for the aggregate property and assets of said company should not be in excess of fifty thousand dollars above the amount of debts of said company existing at the time of the sale hereafter decreed, then" the plan of the defendants for a renewal of corporate existence was to be allowed to go into execution, instead of the sale being made.

This upset price being, in this view, the only thing to be fixed by the ascertainment of the debts, the complainants, in their zeal to promote a sale, contended that it was enough that the court, by a call for claims, should ascertain the highest possible aggregate of all the debts of the defendant company; and that there was no need of an ascertainment of the actual validity and exact sum of any of those claims; and they seem to have induced the court below to act upon this theory.

These appellants maintain a different and opposite view. They contend that the ascertainment of the debts of the defendant ordered by the original and affirmed decree is not merely for the purpose of the fixing of an upset price. It is independent of that detail; so far independent that, if no direction whatever had been decreed as to an upset price dependent upon the amount of the debts, the direction for the ascertainment of the debts would even then have been the same as it now is. This direction is a substantial direction of itself, entirely apart from any condition as to a minimum price of the property. It is an independent determination of the order in which these proceedings for the winding up of the affairs of this expired corporation shall go on. It fixes their succession: first, an ascertainment of debts, next, a sale, and third, a distribution of proceeds.

The ascertainment ordered is a final ascertainment, a judicial fixing and determination, an adjudication which shall specifically establish the rights of the creditor, and specifically conclude the liability of the debtor, in each case.

This appears unmistakably from the manner in which this ascertainment is to be made by the master. He is to weigh evidence. "To this end he may consider the evidence already taken in the cause," says the decree. He is to give "notice to the solicitor of the parties," not merely to the original

parties in the cause, that is, the original complainants and the original respondents, but to all who legitimately make themselves parties in the new litigation which was to open, as soon as this ascertainment of debts was entered upon. Such notice given is to be of "set days for hearing." "And either party," that is, any claimant as creditor of the Pewabic Mining Company, or the Pewabic Mining Company as defendant, "may produce witnesses, as in the ordinary course of a master's proceedings." And the master, having thus proceeded to bring before him all these parties, and heard all their evidence and the parties themselves, is thereupon to find; and is then to "report to this court [court below] his proceedings and findings thereon." R. 2.

There can be no doubt as to what is the issue upon which the master is here directed to find and report. It is the issue raised by the presentation of a claim of indebtedness against the Pewabic Mining Company and a traverse of that claim, in whole or in part, by the company. It is that the company is indebted to the claimant in a certain sum of money, or that the company is not indebted. That is, he is directed to make what is on its face a final finding on the issue of indebtedness in reference to every claim presented — to every claim not barred by non-presentation.

These directions are not for a mere preliminary, interlocutory finding. They are for a finding as final as any which a master in chancery can make. That is, final in the action of his mind — his final determination of the merits of each claim laid before him; a determination so final that, upon acceptance by the court, it may become the basis of a final decree.

In fact, if the original decree and its affirmance did not, in giving these directions, authorize and order a final ascertainment of the debts of the Pewabic Mining Company, then there is no order and no authority for such ascertainment in

this case. If "all questions" and all "the equities of any of the parties in respect to their dealings with" the indebtedness of the Pewabic Mining Company, or any part thereof, are not to be finally ascertained, determined, and adjudicated under the directions which have just been referred to, then there is no provision for their conclusive adjudication in this case. For this is all the direction which the original decree contained upon this subject, and all which has received the affirmance of this court.

And all such ascertainment is directed to be made befo the sale; it is only "after" thus "ascertaining the de ne and assets of said company and making a report thereof" s the court, that the master is to "proceed to sell said property." He is to proceed to sell "after ascertaining the assets and debts of said company and making a report thereof to this [Circuit] court and the confirmation thereof," according to the order of reference made May 6, 1890, under the mandate of this (Supreme) court. There is no order for such ascertainment to be made after a sale is made or ordered to be made.

R. 2,

Further, there is a provision in the decree which shows that an ascertainment of these debts before the sale, and not afterwards, is the only ascertainment contemplated. Upon the occurrence of the favoring condition, the defendants were to be allowed to carry out their own scheme of reorganization. But in order to do this, these stockholders were first to "pay the debts of the Pewabic Mining Company," and this they were to do within sixty days from the day of sale. "Sufficient money to pay said debts," "all the debts," was by the defendants to be placed in the hands of the master "within sixty days from the date of holding the public sale;" that is, the sale which should be attempted and fail of accomplishment for want of an adequate offer. How could all the debts

2.

be paid within sixty days after sale if none of those debts were ascertained before sale — if, when sale was begun, all of the equities of parties dealing with the indebtedness of the company were reserved for future ascertainment?

2. As to the assets. The same considerations are applicable to the assets as to the debts of the company. The assets, as well as the debts, of the Pewabic Mining Company are to be ascertained before sale. This not only because this succession of proceedings is expressly ordered to be the succession in this cae, but also because the direction that a sale cannot otherwise be executed. That direction is not only for the master to sell "after ascertaining the debts and assets," but also it is for him to sell said property, the property of said Pewabic Mining Company, all of it, "the assets and property" previously ascertained, "in one body." He is ordered to sell "all of said property," that is, the same which he was ordered to put "in the condition and situation to sell to the best advantage." There are not two sales ordered or permitted. There is to be but one sale. That must turn all the property, including all the choses in action then remaining, into money; that thereupon there may be one final and complete distribution among all the entitled distributees of all the property of the expired corporation. This must include the amount (if any) due from the defendant directors. That must be made into money by, or before, the sale.

R. 2.

This amount has not only not been ascertained to this time, but the complainants, now before the court as purchasers, have neglected and refused to take due steps for its ascertainment. The defendant directors, surviving, rendered their account to the master as early as in August, 1890, and no action thereon has been taken by master or court, and no

action moved by these quondam complainants, now purchasers.

With neither the debts nor assets of the Pewabic Company now ascertained, when can the affairs of the company be wound up and the stockholders receive their distributive shares? And towards this ascertainment these appellees have neither taken, nor consented to the taking of, any effective steps, in all the time since the mandate went down from this court in February, 1890, more than two years ago. The ostensible object which they set forth as moving them as complainants in 1884, the final closing up of the affairs of this appellant corporation, has been postponed to the forwarding of their real purpose, to wit, that they might at an advantageous sale become purchasers of the corporate property.

It is true, that a reservation of the claim against the defendant directors from the conveyance to the purchasers at the sale of January 24, 1891, appears in the order of confirmation of March 2: appears there, but not earlier. But under the decree affirmed in this cause, this reservation has no validity as an answer to the objection just presented.

Such an answer is not admissible under the language of that decree. For therein "it is ordered, adjudged, and decreed" "that all the assets and property of the said Pewabic Mining Company be sold at public vendue, for cash, to the highest bidder, in one body." Nothing whatever is to be reserved or excepted out of such sale. If anything has been, that of itself is a reason why the sale should be set aside.

II.

That the property was sold for an inadequate price.

The property was sold for $710,000 (Rec. p. 74).

It was immediately resold for 10,000 shares of stock of

the Quincy Mining Company, which are worth at least $800,000 (Rec. p. 111).

The evidence produced at the hearing on the application for resale showed that the fair price for the property was at least $900,000 (Rec. pp. 98, 106, 107, 108, 110).

The sale took place at a time of great financial depression, and when the market for copper properties was specially depressed (Rec. pp. 43–49, 64–67).

III.

THAT UNDER THE MANDATE OF THIS COURT, NOTHING LESS THAN "ALL THE ASSETS AND PROPERTY OF THE SAID PEWABIC MINING COMPANY IN ONE BODY" COULD BE SOLD BY SAID MASTER; BUT THAT, BY ORDER OF THE COURT CONFIRMING THE SALE, AN EXCEPTION WAS MADE THEREFROM OF THE CLAIMS AGAINST THE DIRECTORS, SO THAT IN FACT ALL OF SAID ASSETS AND PROPERTY WERE NOT SOLD IN ONE BODY (Rec. p. 81).

The directions of the mandate were disregarded, in that all the assets of the Pewabic Mining Company were not sold at the sale made on January 24, 1891.

The direction of the affirmed decree and of the mandate is explicit. The words are, —

> "And after ascertaining the assets and the debts of the said company, and making a report thereof to this [circuit] court, as hereinabove provided, said master shall proceed to sell said property at public vendue to the highest bidder, in one body" (Rec. p. 2).

The order referring the case to the special master for execution of the mandate repeats this direction (Rec. p. 7). The report of the master recognizes it as imperative upon

him (Rec. pp. 72, 73), and declares that he advertised for sale and offered for sale "all of said assets and property, real and personal" (p. 74), and that "the said property and assets were then and there struck off to" the present appellees as purchasers (p. 74). The *nisi* order of confirmation entered February 7 states a sale of "all the assets and property of the Pewabic Mining Company in one body." Also, the order of confirmation of March 2 acts upon a "master's report of sale of all the assets and property of the defendant."

Yet with all these recognitions of the duty of the court to make one sale, final and complete, which could be promptly followed by one complete and final distribution, this order of confirmation "provided, however, that nothing herein contained shall be considered as passing to the purchaser or purchasers the claim or claims, if any, against the former directors and defendants in this cause for any sum or sums found to be due from them on the accounting against them directed by the decree in this cause" (Rec. p. 81).

It was no part of the intention of the decree in this case to keep open, after the sale, a litigation over the assets, any more than over the debts, of the company. So far as this proceeding had any justifiable object, that object was the speedy winding-up of the affairs of the expired corporation, and the prompt distribution to the entitled shareholders of all their respective portions of the assets. It did not enter into the intention of the original decree, or of its affirmance, that all the steps in its actual execution were to lead directly to a transfer of the Pewabic property to the Quincy Mining Company; that there was to be no previous ascertainment of assets or debts, except just so much as was necessary to effect that transfer; and that such transfer being accomplished, all the rights of all other parties in interest, creditor

claimants, alleged debtors, and shareholders other than these purchasers, — who by their authority over the conduct of the sale have a power practically to protect themselves, — were to be left to a prolonged litigation in what is to most of them a distant state. Such a method of proceeding is nowhere ordered or allowed in the decree which controls the method of this proceeding. If these appellees insist that this property shall pass to the Quincy Mining Company, they must, as actors in this proceeding, take or at least allow to be taken the steps which have been prescribed as necessary preliminaries to make such transfer valid. They must not resist and hinder the previous ascertainment of the debts and assets of the company.

The decree provides distinctly, that if the defendants shall be allowed to carry out their plan for the final ending of this litigation, then it must be brought to its final termination in sixty days after the sale (Rec. pp. 2, 7). The defendants have a legal right, under what has been decreed in this case, to demand equal promptness with equal completeness, where the plan of the complainants is to be executed. All the assets not then in cash should be turned into cash by the sale. The claim against the directors should have been at that time judicially ascertained and collected, or if doubtful of collection, should be as a definitely ascertained claim, advertised for sale, and sold.

IV.

THAT THE REPORT OF SALE WAS CONFIRMED, IN DISREGARD OF THE RULES GOVERNING THE EQUITY PRACTICE OF THE CIRCUIT COURT OF THE UNITED STATES, WITHIN THIRTY DAYS FROM THE FILING OF THIS REPORT.

General Equity Rule 83 provides that the first day on which the report of a master may be confirmed is the first

rule day ensuing after one month from the filing of the report.

The report was filed February 4, 1891 (Rec. p. 75). The first rule day next after one month from said date was Monday, April 6. The date of confirmation was March 2, 1891 (Rec. p. 81).

This point is more fully argued under point III. of appellant's brief in No. 1416, — *Marcus, Appellant*, v. *Mason and Smith, Appellees*, argued herewith, to which the court is respectfully referred. also infra 62-69.

V.

THAT BEFORE ANY VALID CONFIRMATION OF THE SALE, BONA FIDE OFFERS FOR A LARGELY ADVANCED PRICE WERE PRESENTED TO THE COURT BELOW ON AN APPLICATION FOR A RESALE.

For the argument on this point the court is respectfully referred to the argument under point I. in the brief of Marcus, appellant, in 1416, — *Marcus, Appellant*, v. *Mason and Smith, Appellees*, argued herewith. also infra 62-69.

VI.

THE SALE TO THE COMPLAINANTS, MADE WITHOUT LEAVE OF THE COURT TO BID, IN PURSUANCE OF A SECRET SCHEME ENTERED INTO WITH A RIVAL COMPANY IN WHICH THEY WERE LARGE STOCKHOLDERS, TO TURN OVER THE PROPERTY TO IT AT A LARGE PRIVATE PROFIT, UNDISCLOSED TO EITHER THE COURT, THE MASTER, OR OTHER BIDDERS, IS CONTRARY TO THE PLAINEST PRINCIPLES OF EQUITY, AND MUST BE ANNULLED.

"*A partner who complains that the other partners do*

not do their duty towards him must be ready at all times to offer himself to do his duty towards them."

Lord ELDON in *Const.* v. *Harris*, Turn. & R. 524.

The complainants, partners in the Pewabic Mining Company with the defendants, alleged in their bill that the defendants are not doing their duty to such complainants in respect to such partnership, and have upon this ground received the relief given by this court in the former hearing of the case. *Mason* v. *Pewabic Mining Co.*, 133 U.S. 50.

Have these complainants, in the language of Lord ELDON, been "ready at all times and offered themselves to do their duty" to the defendants?

The defendants in their answer (ibid. p. 53) say that the complainants —

> "are acting in the interest of rival copper companies, whose mines adjoin that of the Pewabic Company, and that their object is to force a sale at public auction when those companies, whose shareholders are wealthy, will have an unfair advantage in purchasing the property below its real value."

The record discloses the exact truth of this statement The complainants, after resisting every effort to delay the sale, succeeded in causing it to be made under advice given by themselves to the court, and contrary to the protest of the defendants, at a period of great financial depression resulting from a great commercial panic. They then, without liberty from the court to bid, and without disclosing to the court their intention to bid, were the highest bidders at the sale, and within three days, in pursuance of a secret plan, already

formed at the time of the bidding, in combination with a rival company in which they were large stockholders, conveyed the property to such rival company at a largely advanced price.

No court of equity can allow a sale so made to stand.

It is void —

(1) Because no leave was obtained of the court to bid.

(2) Because the complainants had advised the court regarding the sale, as parties interested only as sellers and not as buyers, and had pressed forward the sale, without disclosing to the court their already formed intention to bid, and had presented their own affidavits, in which no mention was made of such intention (Rec. pp. 68, 71).

(3) Because the complainants had concerted a scheme with the Quincy Company to take the property from them at a large personal profit, and presented to the court affidavits of officers of the Quincy Company, for the purpose of pressing on the sale, in which no mention was made of the already formed intention of the Quincy Company of acquiring the property (Rec. pp. 70, 112).

(4) Because the complainants made the bid at the sale and purchased the property knowing that the Quincy Company was willing to pay a much higher sum than that paid by the complainants, and would pay said sum to the complainants, and neither communicated such knowledge to the court, to the special master at the sale, to the defendants or any other of their fellow-stockholders, or to any of the other bidders at the sale (Rec. 112).

(5) Because they advised the court that the Quincy Company would bid independently, and pressed its sale forward, advising the court that the Quincy might withdraw from

bidding in case of postponement, knowing all the time this plan had been concerted.

> "Affiant further says that, so far as the Quincy Mining Company is concerned, the chances of bidding will grow less from day to day, owing to the change in the copper market, and of the depression in its own stock" (Rec. p. 49).

(6) Because, being large stockholders and partners in a rival enterprise, they advised the court, made the bid, purchased the property, resold it at an advanced price which they pocketed themselves for their own personal benefit and in fraud of the other stockholders.

(1)

The rule is well settled in England that those having a conduct of a judicial sale, or bearing a fiduciary relation to the property sold, or its owners must apply to the court prior to the sale for leave to bid.

This sale was in the nature of a sale of partnership property upon dissolution of the partnership.

Mason v. *Pewabic Mining Company*, 133 U.S. 59.

The court, MILLER, J., said, page 59, —

> "We do not see that the rights of the parties, in regard to the assets of the corporation, differ from those of a partnership on its dissolution."

(*a*) *See the English decisions:*

The court is extremely reluctant to give parties who have the conduct of a sale liberty to bid at it, and the conduct of a sale in an action usually belongs to the plaintiff; if,

therefore, he desires to bid, some arrangement has generally to be made respecting the conduct of the sale.

2 Lindley on Partnership, pp. 558, 559.

In *Dale* v. *Hamilton*, 10 Hare, page 7, it was held that the plaintiff in the cause had the conduct of the sale of partnership property under a decree in the cause, although, according to the contract, if performed without suit, he might not have been entitled to interfere in the sale.

> "The person selling may not buy, nor any person concerned or employed in selling, unless by leave obtained from the court."
>
> Rorer on Judicial Sales, p. 58; 2d ed. p. 47.

In *O'Connor* v. *Richards*, Sau. & Scul. 246, which was an application on behalf of a defendant to open a sale to the plaintiff after confirmation, upon the defendant's undertaking to procure a *bona fide* advance of ten per cent upon £1500, it was held that the sale should be reopened, the ground therefor being the fact that the plaintiff was the purchaser.

The jurisdiction of the court was expressly assailed in this case, and it was decided that the court had jurisdiction to set aside the sale after confirmation, and that it lay within the discretion of the court, *Ryder* v. *Gower*, 6 Bro. Par. Cases, 306, being cited as authority. The Master of the Rolls said, p. 258, —

> "In all cases in which the court refused to open the biddings [after confirmation], the purchaser was a person unconnected with the estate sold, who came into the office merely as purchaser, and was declared the best bidder; but even as against such purchaser the biddings will be opened under special circumstances. The case

now before me differs, in my opinion, very essentially from that of a purchaser unconnected with the estate. The plaintiff in the cause is himself the purchaser: I do not say that the plainiiff may not become the purchaser; at sales before the master it has been the practice to permit him to do so, although, perhaps if the matter were to be discussed as a new question, the propriety of the rule might be questioned."

See also *Ryder* v. *Gower*, *ubi supra*.

In *Sidny* v. *Ranger*, 12 Sim. 118, by a decree in two :uses an estate was directed to be sold; the plaintiff in one the causes, who was also a solicitor, took upon himself the rriage of the decree and the conduct of the sale. The es-ate was sold at auction and opened by said plaintiff, and at the second bidding the said plaintiff bid in the property under an assumed name. It was held that this sale should be set aside, although it had been confirmed.

Byrne v. *Lafferty*, 8 Ir. Eq. Rep. 47, was a motion by counsel for the plaintiff in said cause that the master might be at liberty to certify the plaintiff as purchaser of the lands and premises directed to be sold under the decree in said cause, he having been the highest and best bidder. It appeared from the master's certificate that the sale had been twice adjourned, no sufficient sum having been bid for the premises, and the plaintiff on the third occasion made the highest bid.

The Master of the Rolls said, —

"Unless you are able to show some special circumstances to warrant the course taken in this case, I cannot grant the application. The plaintiff, if he were desirous of bidding, should have come in, before the

lands were set up to be sold, for liberty to bid; but having bid without such permission, was an irregularity."

In *Alven* v. *Bond*, 3 Ir. Eq. Rep. 365, a judicial sale after confirmation was set aside, on the ground that the purchase was made in trust, as to one third, for the receiver in the cause.

In *Guest* v. *Smythe*, 5 L.R. Chan. 551, which was a motion to set aside a judicial sale after confirmation, Sir G. M. GIFFARD, L.J., said, —

"It is, of course, well known that a person who ha conduct of a sale under direction of the court cannc himself buy; and of course it is equally well know that, as he cannot buy, his solicitor cannot buy. It equally well known that parties to the suit cannot bu without the special leave of the court."

In *Wild* v. *Milne*, 30 Beav. 504, express liberty was given by the court to all partners of a firm operating a colliery to bid for the property upon dissolution sale, except the one conducting the sale.

In *Drought* v. *Jones*, Flan. & Kel. 316 (Ir. R. 1841), which was an application by the plaintiff's solicitors for liberty to bid in the plaintiffs' name at a judicial sale by a master, it was held that the plaintiffs might bid upon the condition that they gave up the conduct of the sale to the solicitors of the defendants.

And in *Ennis* v. *Casey*, ibid. page 319, which was an application on behalf of the plaintiff for liberty to bid for certain lands directed to be sold under the decree in this cause, the Master of the Rolls said, —

"I had occasion to consider the question before, and I was then, as I am now, of opinion that a plaintiff should not, without the special direction of this court, be at

liberty to bid. Whenever a plaintiff, therefore, wishes to become the purchaser, I shall make it part of the order giving him liberty to bid, that the carriage of the sale be taken from him."

The practice in regard to the application by the plaintiffs for leave to bid is fixed by —

Clarke v. *Dobbin*, 8 Ir. Eq. 111, which decides that an pplication by a plaintiff to bid at a sale under a decree in the ause must be upon notice to the parties. This was an appliation on behalf of the plaintiff.

The Master of the Rolls said, —

"I cannot grant this application, as you have not served notice of it upon the parties in the cause."

Ex parte Lacey, 6 Ves. 625, decides that a trustee cannot purchase at a sale of the trust property. Lord Chancellor ELDON said, —

"The rule is this: a trustee who is intrusted to sell and manage for others, undertakes, in the same moment in which he becomes a trustee, not to manage for the benefit and advantage of himself."

In *Lister* v. *Lister*, 6 Ves. 631, it was held that upon a purchase of trust property by the trustees on their own account, that at the option of a *cestui que trust* it shall be resold.

(*b*) *American law.*

The principles of American law being the same, it is in the interest of equity that the same rule should obtain.

Freeman on Void Judicial Sales, p. 33, says, —

"Trustees, sheriffs, constables, administrators, executors, and guardians, and all persons vested with au-

> thority to sell the property of others, are themselves forbidden from becoming interested in the sale. A sale made in violation of this rule will always be vacated upon a motion made in good time. . . . If they seek to avoid it, they are entitled to succeed, irrespective of the fairness or unfairness of the sale, or the motives which prompted the administrator or other officer or trustee."

The inability of the complainants to bid arises from three causes:

> (1) They had the conduct of the suit, were the *domini litis*.

The master's report declares that "I, Peter White, special master, having been charged with the solicitors for the complainant with the execution of said decretal order" (Rec. p. 73).

> (2) They were in equity joint partners with the defendants. They were thus to be both sellers and buyers, nor could they derive any personal profit in which their partners did not share.
>
> (3) Besides being partners in the property sold, they were likewise partners in a rival concern for which they were in fact bidding. They had thus a private interest antagonistic to their copartners.

The policy of the rule of equity in requiring persons thus interested to make an application to the court is obvious. Reasons may exist when such an application will be denied, and other bidders will not be hindered by bidders of this sort. If the application is granted, it will be known and of record, and the transaction will be above-board. On the one hand, the other parties not represented will have an opportunity of regulating their conduct, either by themselves appearing as

bidders, or by seeking an order that they should be included in the benefits of the purchase of the property; on the other hand, other persons desiring to purchase are openly informed that the owners are bidders, and the sale is not exposed to the suspicion and taint of by-bidding, in which the owners or a portion of the owners compete with third parties in the bidding.

It was well said in an old case, —

> "When an estate is sold by auction, the certain effect of a bidding by a person known, or even supposed, to be interested in raising the price, *is to chill the sale*, and restrain the free biddings of others."
>
> *Northorpe* v. *Pennyman*, 14 Veazie, 517.
> *Ex parte Lacey*, 6 Veazie, 630, Sumner's note.
> *Downes* v. *Grazebrook*, 5 Meriv. 209.

In *Williams* v. *Attleboro*, Turner & Russell, 70, Lord ELDON says that bidding by a party "has the effect of *dampening the sale*."

If in this case the complainants, following this rule, had openly applied for leave to bid, stating their exact position both with reference to this property and the Quincy Company, what effect would a consideration of their positions have had on the questions as to the postponement of the sale, or its confirmation, or the right of the other shareholders to participate either in the purchase or the profits derived from it?

Could it be possible that a court of equity, knowing what is now known, could have granted an absolute license without conditions? On such an application the other party is entitled to be heard, and the wisdom of the rule, and of the consideration of these questions in advance of the sale, must be obvious.

(2)

If it be held that permission from the court to bid is not a prerequisite in a case like the present, equity will examine with the most careful scrutiny into a sale so made, will apply to it the equitable doctrines governing partnership and other fiduciary relations, and if it appears that these principles have been violated, and that traces of constructive fraud are found in the event, the sale will be set aside, and a new sale ordered upon such conditions as may appear to the court to be equitable to all parties.

Two doctrines are open to discussion:

(*a*) That with parties bearing the fiduciary relations which these complainants bore, a sale to them is innately and *per se* void and not merely voidable, and that the court will not seek to probe the motives or inquire into the special circumstances to determine the question.

(*b*) That the court will make such inquiry in each case as it may arise.

(*a*)

It is respectfully submitted that the first paragraph states the true doctrine adopted nearly half a century ago by this court, and since followed in all the federal courts. In that case a purchase by an executor through a third party openly at public auction and at a fair price was declared fraudulent and void *per se*.

WAYNE, J., said, —

"In this conflict of interest, the law wisely interposes. It acts not on the possibility that in some cases the sense of that duty may prevail over the motives of self-interest, but it is against the probability in many cases, and the danger in all cases, that the dictates of self-interest will exercise a predominant influence, and

supersede that of duty. It therefore prohibits a party from purchasing on his own account that which his duty or trust requires him to sell on account of another, and from purchasing on account of another that which he sells on his own account. In effect he is not allowed to unite the two opposite characters of buyer and seller, because his interests, when he is the seller or buyer on his own account, are directly conflicting with those of the person on whose account he buys or sells. 2 Burge's Comm. 459."

Michoud v. *Girod*, 4 Howard, 555.

Judge STORY's statement of the law is similar:

"The principle applies, however innocent the purchaser may be in a given case. *It is poisonous in its consequences.* The *cestui que trust* is not bound to prove, nor is the court bound to decide, that the trustee has made a bargain advantageous to himself. The fact may be so, yet the party not have it in his power distinctly and clearly to show it. There may be fraud and yet the party not be able to show it. It is to guard against this uncertainty and hazard of abuse, and to secure the trustee from temptation, that the rule does and will permit the *cestui que trust* to come, *at his own option, and, without showing essential injury, to insist upon having the experiment of another sale.*"

Story, Eq. Juris. 322, and cases cited.

Such too is the English law. In *Ex parte James*, Lord ELDON set aside a sale in bankruptcy because the solicitor to the commission had made the purchase, although he believed that the purchaser "acted purely at the moment of the sale," that "he purchased at a price then understood to be the full value."

"This doctrine [he says] stands more upon upon general principles than upon the circumstances of any individual case. It rests upon this: that the purchase is not permitted in any case, however honest the circumstances; the general interests of justice requiring it to be destroyed in every instance, as no court is equal to the examination and ascertainment of the truth in much the greater number of circumstances."

Ex parte James, 8 Ves. Jr. 337.

The application of the principle will not depend upon any nice inquiry whether or not the sale was fairly conducted.

Randall v. *Errington*, 10 Ves. 428.
Ex parte Bennett, 10 Ves. 385.

For if such an investigation were necessary before a bargain, obtained by persons standing in situations of influence and trust, could be set aside, the ingenuity of fraud might in many cases elude detection; but the broad rule is, no man shall sell to himself.

Parkes v. *White*, 11 Ves. 226.
Hatch v. *Hatch*, 9 Ves. 297.
Lister v. *Lister*, 6 Ves. 632.
Campbell v. *Walker*, 5 Ves. 681.
Sumner's note to *Whichcote* v. *Lawrence*, 3 Ves. 751.

This case does not belong to those cases which are merely voidable, as in *Twin Lick Oil Co.* v. *Marbury*, 91 U.S. 587. As was said in that case, —

"There may be cases where such contracts are void *ab initio*, as when an agent to sell buys of himself."

Which is this case exactly.

(*b*)

But whichever rule is adopted by the court, the facts on record present a clear case.

No doubt can exist that the principles of partnership law adopted by this court when this case was formerly before them, apply with equal force to the question before the court to-day. In its former decision the court held the complainants entitled to a sale because they were partners. When, therefore, a sale comes to be made, the same rules of partnership are applicable. It is partnership property which is to be sold, and the rules relating to partnership apply to the sale. These rules are not relaxed by a court of equity because the partnership has been dissolved, but remain throughout the winding up.

Mr. Lindley observes, —

> "The obligation to perfect fairness and good faith is, moreover, not confined to persons who actually are partners. It extends to persons negotiating for a partnership, but between whom no partnership yet exists, and *also to persons who have dissolved partnership, but who have not completely wound up and settled the partnership affairs;* and most especially is good faith required to be observed when one partner is endeavoring to get rid of another, *or to buy him out.*"
>
> Lindley on Partnership, § 569.

> "The same obligation to good faith which exists on the part of every member of a firm, exists also on the part of every member of a company."
>
> Ib. 580.

> "On the dissolution of the corporation its effects be-

came a *trust fund* for the benefit of its creditors and its stockholders."

Curran v. *Arkansas*, 15 How. 304.

"After payment of the debts, the portion of the trust fund remaining belongs to the stockholders, and is to be distributed among them according to rules governing trust proceedings."

Angell and Ames, Corporations, § 778.

A sale under order of a court of equity is but a step in these proceedings; and is equally governed by the rules of equity upon trusts, partnerships, and other fiduciary relations.

Thus it is a rule of common application that upon dissolution of a partnership each partner becomes a trustee for the others as to funds in his hands.

Stephens v. *Orman*, 10 Fla. 9.

(3)

The admitted omission of the complainants in advising the court of their intention to bid, and their equally inequitable omission to notify the special master, or the other stockholders or other bidders, amounts to such *suppressio veri* as to afford in itself ground for setting aside the sale.

The complainants in their double relation were bound to absolute frankness and disclosure. They professed to be acting for the benefit and advantage of all the shareholders, and were in duty bound to make known to all bidders at the sale every circumstance within their knowledge.

"It was the duty of Wade, if he meant to bid, to furnish all the knowledge he had to those who were to sell."

Lord ELDON, *Wren* v. *Kirton*, 8 Ves. 502.
Williams v. *Attboro*, Turn. & Russ. 70.
Thompson v. *Mount*, 1 Barb. Ch. 607.
Guest v. *Smythe*, 5 Law Rep. Ch. App. 551, 556.

"The principle is, that as the trustee is bound by his duty to acquire all the knowledge possible to enable him to sell to the utmost advantage of the *cestui qui* trust, the question, what knowledge he has obtained, and whether he has fairly given the benefit of that knowledge to the *cestui que trust*, which he always acquires at the expense of the *cestui que trust*, no court can discuss with competent sufficiency or safety to the parties."

Lord ELDON, *Ex parte James*, 8 Ves. 348.

The complainants further tainted and vitiated their advice to the court by reinforcing it with the affidavits of officers of the Quincy Mining Company, without disclosing to the court the fact that the Quincy Mining Company desired and intended to become the real purchasers of the property, and to pay a largely advanced price.

The concealment of these material facts is an absolute badge of fraud.

It is not too much to say that they bid with the contract of the Quincy Mining Company in their pockets to pay them a large advance.

"If the purchaser of the estate is a partner with the solicitor in the cause, and *is in possession of some particular knowledge to the benefit of which the other parties were entitled*, in all these cases the court will open the biddings, *although the report in the cause has been absolutely confirmed*."

2 Daniels' Chancery Practice (5th ed.) p. 1289.

Price v. *Moxon*, July 14, 1854, before Lord HARDWICKE.
Ryder v. *Gower* 6 Bro. P.C. 306.
Watson v. *Birch*, *infra*.

This fact they disclosed to no one. It was thirty-three days after the sale (February 26) when this fact was inserted in a circular addressed to the shareholders of that company, the Quincy's, and not to the defendants; that is, just four days before the date of confirmation. The circular was issued in New York, the defendant company had its office in Boston, and the confirmation was made at Grand Rapids, Michigan.

(4)

The record shows that this advice of these purchasers to the court not to postpone a sale from January 24, 1891, was incorrect in fact. Little more than six weeks — the period of the previous postponement — elapsed before a satisfactory advance was offered upon the highest bid of that date, and before the court could act upon that offer, another offer of a still larger advance was made.

The complainants having become purchasers, the right accrued to the defendant owners to elect whether to have this sale confirmed or set aside. The complainants set the court in motion to sell; they were the persons "through whose instrumentality that decree and sale were obtained," and they had no absolute right as bidders. *Talbot* v. *Minett*, 6 Ir. Eq. 83. As against an accepted bid by a litigating party, inadequacy of price itself is sufficient to justify a setting aside of the sale. The rule otherwise is by Chancellor WALWORTH confined to the instance where the property is "struck off to a stranger to the suit." *Thompson* v. *Mount*, 1 Barb. Ch. Pr. 607.

Of this irregularity in procedure, the court was bound to take notice of its own motion. *Byrne* v. *Lafferty*, 8 Ir. Eq. 47. In this case the court, apparently in the absence of any opposing party, of its own motion and suggestion, denied an application of the purchasers for liberty to the master to certify his purchase, the court itself taking notice that the purchaser was the plaintiff in the cause.

(5)

Two cases in this court are good instances of "*Exceptio probat regulam:*"

Smith v. *Black*, 115 U.S. 308.
Allen v. *Gillett*, 127 U.S. 596.

In the latter case the trustee was allowed to purchase, because —

(1) The sale was brought about by a third party;

(2) The trustee had no part in procuring it;

(3) He had no control over it whatever;

(4) The trustee had no duty incompatible with his right as a purchaser.

(6)

The cases, both American and English, governing transactions by a partner seeking private profit from partnership transactions, are collated by Mr. Lindley.

Lindley on Part. page 304 *et seq.*

Two observations may be made regarding these cases:

(1) That the same principles are applicable after dissolution and during the winding up, as during the actual existence of the partnership.

(2) That the injured parties may disavow the transaction complained of, and may call upon a court of equity to avoid

it; or, if profits have been realized and can be reached, the tort may be waived, and equity will decree to such parties an equal right in such profits.

Jones v. *Dexter*, 130 Mass. 380.

The doctrine is analogous to the rights of the representation of a deceased partner as against the partner conducting the business after his death.

Clay v. *Field*, 138 U.S. 464, 474.

Under the first head may be cited an American decision:

Nelson v. *Haynes*, 66 Ill. 487.

A partner having died, the other partners, one of whom was his executor, purchased for themselves his interest at below its value.

Held, that all the partners were trustees of the deceased partners, and that they could not irrespective of price be both sellers and buyers, and that the sale was void absolutely.

The court say "that a man entered into a contract of sale with himself, or made a sale to himself, is to utter a legal solecism." The inadequacy of price is not regarded as the governing principle, but the fiduciary relation.

A renewal of a lease *after dissolution* goes to the benefit of the administratrix of deceased partner.

Clegg v. *Fishwick*, 1 Mc. & G. 294.

So held in *Clegg* v. *Edmondson*, 8 DeG. M. & G. 787, where there was nothing clandestine.

Bently v. *Craven*, 18 Beav. 75, where the profits on sugar bought by a partner and sold to the firm at an advance were held to belong to the partnership.

Loch v. *Lyman*, 4 Irish Ch. 188. Two parties had an

agreement to supply an army with food. One of them entered into a contract with others to do the same. *Held*, the latter's profits were to be divided.

In *Dunne* v. *English*, 18 Law Rep. Eq. 524, the plaintiff and defendant had bought a mine, and it was arranged that the defendant should sell it at a profit of $10,000. The defendant sold it for a higher profit to a company in which he had an interest. The plaintiff was held entitled to one half the whole profit.

In the later case the party complained of was, as in this case, a partner in both the firm whose property he sold and in the purchasing firm. But the present case is much stronger than that, because the complainants were partners not only in the concern they sold to, but that concern was in the same business, and was a rival to the concern which was sold.

Equity regards with suspicion and often prevents the mere carrying on by a partner of a business in rivalry to that of a firm.

A partner cannot lawfully carry on for his own benefit any business in rivalry with the firm to which he belongs.

Glassington v. *Thwarles*, 1 Sim. & Stu. 124.
England v. *Curling*, 8 Beav. 129.

One of several partners cannot carry on the same business in the same place, though there be no express covenant against it, and a court of equity will enjoin it.

Marshall v. *Johnson*, 33 Ga. 500.

But that a partner should not only carry on a business rival to his firm, but that he should be allowed to buy out the firm's business, without the consent and contrary to the protest of the other partners, and then turn over that busi-

ness at a profit to the rival firm, would seem to put a climax to a case of constructive fraud such as is unequalled so far in the books. And the only real question would seem to be whether the profits the complainants realized should be shared by their defrauded partners in the Pewabic Company or by their defrauded partners in the Quincy Company.

(*b*)

Nor does the Quincy Company stand in any better position as the grantee of the complainants. It not only took the title with notice, but the circular issued to its stockholders shows that it was privy to the plan of purchase, — indeed, that it was its principal contriver.

This circular recites, —

> "Having in view the probability of the Pewabic property, which adjoins our mine at the north, being sold at auction, it was thought desirable at the stockholders' meeting held *June 5, 1889*, to increase the capital from 40,000 shares to 50,000 shares, the additional 10,000 *being intended to provide for the purchase of the Pewabic*, should such opportunity arise.
>
> "The property was sold to Messrs. Mason & Smith, of New York city, *who bought for the object of transferring it to the Quincy Mining Company*.
>
> "It was unanimously voted to accept this offer of Mason & Smith to transfer the property to the company in consideration of the 10,000 shares of increased stock, upon the delivery of a satisfactory deed."
>
> Rec. p. 112.

The deed from the master to the complainants is dated

March 25; that from the complainants to the Quincy Company, March 28.

Rec. pp. 112, 119.

Kingsman v. *Parkhurst*, 18 How. 289.

VII.

THE DEFENDANTS HAD THE RIGHT OF ELECTION BETWEEN A CONFIRMATION OF THE SALE AND RECEIPT OF THE PROFITS OF THE BUYERS ON THE ONE HAND, AND OF ITS ANNULMENT ON THE OTHER. THIS ELECTION IS A QUESTION INDEPENDENT OF THE DATE OF CONFIRMATION BY THE COURT BELOW. THEY HAVE SEASONABLY EXERCISED IT AND HAVE BEEN GUILTY OF NO LACHES.

This doctrine in all cases of constructive fraud has been discussed under point VI., and is elementary; and it is evident that it is a question of a right to avoid fraud. It is to be governed by the rules of equity as to what is or what is not laches by parties seeking relief, and is not concerned with the question of confirmation by the court below.

The fact of a confirmation is not regarded by courts of equity as material. As against fraud or misconduct, intentional or constructive, on the part of the purchaser, the confirmation of the sale has no force. It raises no bar of limitation.

"If fraud appears, that suspends the operation of the general rule."

Watson v. *Birch*, 2 Ves. Jr. 51.

"The purchaser's conduct must be fair; there must be no misconduct on his part."

White v. *Wilson*, 14 Ves. Jr. 151.

"Fraud, still less positive, intentional fraud is not the only exception."

Watson v. *Birch*, *supra*.

"Though the inadequateness of the price will not of itself be sufficient to set aside the contract, yet it is a very material ingredient, and, with other things, will go a great way towards it."

Marlett v. *Warwick*, 18 N.J. Eq. 108.

"Large increase of price is a strong auxiliary argument."

Watson v. *Birch*, *supra*.

In another case, a sale, — and that a second sale, — made in 1834 and confirmed in 1838, was set aside in 1841.

Sidney v. *Ranger*, 12 Simons, 118.

In *Chatham* v. *Greyson*, 5 Ves. Jr. 86, Lord LOUGHBOROUGH opened the biddings after the sale had "been absolutely confirmed," merely upon an advanced offer as soon as that offer was advanced enough.

Another, made in 1788, was set aside in 1803. This was done, although the Chancellor (ELDON) believed that the purchaser "acted purely at the moment of sale," as before stated.

Commissioner ASHURST was equally positive that the mere fact of previous confirmation did not make too late a subsequent motion to set aside a sale. His language was, —

"As to the time of applying, there is no laches, as the report was confirmed only a few days before the long vacation; and therefore there was no opportunity of applying sooner."

Watson v. *Birch*, 2 Ves. Jr. 51.

In the present case, very "few days" indeed intervened between the confirmation and the applications against the highest bid. The confirmation was made March 2; the next day a higher bid was brought to the knowledge of the court; and only ten days later a largely advanced offer was formally presented. And place here extends the requirement of time: the place of this sale was in the Upper Peninsula of Michigan, and new bidders could be found only in Boston. Also the amount of money to be raised by these bidders was unusually large.

This court has said, —

> "In a case of actual fraud, courts of equity give relief after a long lapse of time." "Where fraud is imputed and proved, length of time ought not to exclude relief." "There is no rule in equity which excludes the consideration of circumstances; and, in a case of actual fraud, we believe no case can be found in the books in which a court of equity has refused to give relief within the lifetime of either of the parties upon whom the fraud is proved, or within thirty years after it has been discovered or becomes known to the party whose rights are affected by it."
>
> *Michoud* v. *Girod*, *ubi supra*.

Lord ROMILLY, Master of the Rolls, expressly denies "that the confirmation of the sale affects the question, there not having been unreasonable delay or acquiescence." *Guest* v. *Smythe*, 5 L.R. Ch. App. 551. And in this case, in the court above (H. of L.) which reversed the orders of Lord ROMILLY on the merits, finding the bidder not to be within the forbidden class, no weight was given to the fact of confirmation, this fact not being mentioned in the opinion.

The question of confirmation is immaterial if the trustee

is a purchaser. However fair the transaction, it must be subject to an option in the *cestui que trust, if he comes in a reasonable time*, to have a resale; unless the trustee, to prevent that, purchases under an application to the court.

Campbell v. *Walker*, 5 Vesey, Jr. 678.
Sumner's note, ibid.

The option to avoid a sale must be exercised in a *reasonable* time.

Twin Lick Oil Co. v. *Marbury*, 91 U.S. 587.

VIII.

THAT THE ADVANCE PRICE OFFERED TO BE BID FOR THE PROPERTY SOLD, IN CASE A NEW SALE SHOULD BE ORDERED, WAS LARGE ENOUGH TO INDUCE AND REQUIRE THE COURT TO OPEN THE BIDDINGS AND TO ORDER SUCH RESALE, AND THAT SUCH OFFER WAS AMPLY SECURED AND GUARANTEED AND WAS SEASONABLY MADE FOR THAT PURPOSE.

For the argument on this point, the court is respectfully referred to the argument under point IV. in the brief of *Marcus, Appellant*, v. *Mason and Smith, Appellees*, argued herewith.

Besides the points raised by this appellant's specification of errors, there are some which were raised by the appellees, on their late motion to dismiss these appeals, the consideration of which the appellants understand to have been postponed to this hearing.

The appellees then moved the court to dismiss the appeal from the order of March 2, 1891, confirming the sale made under the mandate of this court, "because the alleged president and treasurer of a dissolved corporation have no power to appeal." (First pamphlet, p. 2.)

Again:

> "Because the record shows Mason and Smith owned a large majority of the stock of the dissolved corporation, and oppose appeal." (Id.)

They also moved, —

> "Third. To dismiss the appeal of the Pewabic Mining Company, and also the appeal of Mr. Marcus from the order of April 27, 1891, refusing his application to open the biddings; the ground of this motion being that said order is not appealable." (Id.)

Upon these points, the appellants proceed to submit as follows: —

IX.

The Pewabic Mining Company still exists for all the purposes of this litigation.

The ground heretofore, and doubtless again to be, urged for the dismissal of this appeal, is that "the alleged president *pro tem* and treasurer of a dissolved corporation have no power to appeal."

The main force of this objection seems to lie in the word "dissolved" as qualifying the word "corporation."

It is in order, then, to show that the Pewabic Mining Company, a corporation established under the laws of Michigan, is not, for any of the purposes of this suit, a dissolved corporation under the laws of that state.

A statute of Michigan provides that —

> "all corporations whose charters shall expire by their own limitation" "shall, nevertheless, continue to be bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns or dispose of or convey their property, and to divide their capital stock." (Rev. Stat. 1846, chap. 55, sec. 8; 1 How. St. p. 1244, sec. 4867.)

Another provision of Michigan law is that —

> "the court in which any suit or proceedings against a corporation which shall have been dissolved by a decree in chancery or otherwise, shall be pending at the time of such dissolution, shall have power, on the application of either party, to make an order for the continuance of such suit or proceeding, and the same may thereafter be continued until a final judgment or decree shall be had therein." (Rev. Stat. 1846, chap. 118, sec. 38; 2 How. St. p. 2029, sec. 8211.)

The charter period, and with it the active corporate life, of the Pewabic Mining Company expired April 4, 1883. This present suit against it was commenced by bill dated March 31, 1884, and was, during the period of three years from the expiration of the charter period, prosecuted to final hearing and submission for judgment; that is, prior to April 4, 1886. On that day the case was under advisement of the

court as to final decree. And thirty days after the expiration of the three years in which a partial corporate existence is definitely extended, that is, thirty days after April 4, 1886, to wit, on May 4 in that year, a decree was rendered against this corporation.

From that decree both parties appealed, and both appeals were allowed. Both were entered in the appellate court, and both, when reached in order (October term, 1889), were heard. On this hearing the decree against the Pewabic Mining Company was affirmed, and against this corporation with the other original defendants judgment and execution for costs on appeal were awarded.

On affirmance, a mandate having gone down, the Pewabic Mining Company, as such, appeared and was heard as a party in all the proceedings of the court below, under the mandate. It objected to the allowance of claims against itself. With the other defendants it petitioned for a postponement of the sale of its property ordered for December 20, 1890, it being the only one of those defendants who would be aggrieved by a disadvantageous sale. And its petition was heard and granted. In like manner it petitioned for a postponement of the sale ordered for January 24, 1891; and this petition was heard and denied.

The sale having been made on this last-named day, and reported to the court, the Pewabic Mining Company, with the other defendants, filed exceptions against the confirmation of said report, and was heard thereon, being the only defendant actually to be aggrieved by such confirmation. Later, this Pewabic Mining Company, alone of the defendants, applied to have said sale set aside, and a resale ordered, and this application was heard.

No less than three appeals of the Pewabic Mining Company from action in confirmation of the sale of January 24,

1891, have been presented to the court below and allowed, one originally joint, and the other two each taken by this company alone. And finally, two supersedeas bonds, in which the Pewabic Mining Company is sole principal, have been presented for approval, and have been approved and filed in the case.

Upon the foregoing statement, it is respectfully submitted that, by the action of the court below and of this court from the commencement of this suit to its latest stage, the Pewabic Mining Company has been recognized as a corporation existing with full power to defend this suit, and competent to perform all the functions and to exercise all the privileges of such defendant, and that such continued existence is plainly authorized by the cited provisions of Michigan law.

But the question whether the Pewabic Mining Company has been, for any purpose, a subsisting corporation since April 4, 1883, and again, since April 4, 1886, being a question depending upon Michigan law, is therefore one which the Supreme Court of Michigan is peculiarly competent to decide. And that court has decided this question, tacitly, it is true, but none the less plainly. This in the case of the *Attorney General* v. *Perkins*, 73 Mich. 303.

This was a case on information in the nature of a writ *quo warranto*, alleging against the defendants a usurpation as pretended corporators of the Pewabic Mining Company. The defendants in their answer set up a renewal of the corporate existence of the Pewabic Mining Company, whose charter period expired April 4, 1883, that is, a renewal of the existence of this appellant corporation; such renewal having been effected, as they said, February 4, 1888, alike after April 4, 1883, and April 4, 1886. This renewal was effected under a a statute of Michigan of March 19, 1887. And that statute,

in terms, allowed such privilege of renewal only to a corporation whose dissolution had not become complete, to something which still had some spark of corporate vitality.

The point was distinctly made by the relators, in their argument, that the Pewabic Mining Company was not entitled to the privilege opened by the statute of 1887, because not within its descriptive terms; because, long before February 4, 1888, by April 4, 1886, at latest, the Pewabic Mining Company had lost all its corporate vitality, had become totally dissolved and extinct. This position was taken by the relators in their argument, and was met and fully argued in behalf of the respondents in their reply. It was a position which, if sustained, easily swept away the whole case of the respondents. The whole dependence of the respondents was upon the statute of 1887; if they were not within its descriptive terms, they were certainly without warrant for their corporate character. A decision against them upon this point would have been very simple and of very limited scope, a decision against the Pewabic Mining Company alone.

This simple decision the Supreme Court of Michigan refused to make: no hint of it appears in their opinion. They chose rather to decide that the legislature of Michigan, under the constitution of Michigan, had no power to authorize the renewed corporate existence of a corporation (except municipal), which had already enjoyed a corporate existence for one period of thirty years. This whether the privilege of renewal were exercised before or after the expiration of its charter period. And in deciding this that court decided two statutes of Michigan to be unconstitutional and void. They preferred to do this rather than to decide that the Pewabic Mining Company had ceased to exist as a corporation on or before February 4, 1888.

And if this company had not ceased to be, for absolutely

all purposes, a body politic and corporate in 1888, it has not so ceased since. If it had any spark of corporate vitality then, it has that spark of vitality now. All the vitality it had then was as litigant in this suit; and this suit still continuing, it has still that vitality, which is the full vitality of a litigant, full power to receive judgment in its favor and to suffer judgment against it, and as to such judgments full capacity to submit to or take appeal; to exercise all the functions of appellee or appellant.

And this decision of the Supreme Court of Michigan was undoubtedly correct. The true principle ruling this question is stated by the Supreme Court of Maine in *Hunt* v. *Col. Ins. Co.*, 55 Me. 290, which was a case touching a corporation of New York, in these words:

> "If by law or usage in the courts of New York, where the judgment was rendered, the corporation may still be a party of record, and suits maintained or defended in its name, though its affairs there are under the guardianship of the servants of the court, it must be considered as having a qualified existence so long as judgments can be rendered for or against it in the courts of that state.'

And this Maine opinion has strong support in *Colchester* v. *Seaber*, 3 Burr, 1866; *Rex* v. *Passmore*, 3 D. & E. 199; *Bewick* v. *Alpena Co.*, 39 Mich. 700 (708, 710).

The Michigan court declares that this statute provision continues a suit "in full vitality," the vitality referred to being that of the corporate party to the suit. That is to say, it holds that, for the purposes of the continued suit, the corporate party retains its "full vitality" as a corporation. For those purposes its dissolution is postponed till the termination of the suit, and is meanwhile deprived by statute of all its usual effect in this suit, and made as though it never had

taken place. Upon the capacity of the corporate suitor thus continued, the continuing statute lays no restriction. It prolongs that capacity, not by specifying some particular capacities which shall survive the partial dissolution, but by providing for the continuance of the suit; and such a prolongation carries not one, but all the capacities of a suitor, — his "full vitality" as the state court declares. It prolongs the liability (as in that case) to be an appellee; and if the liability to be an appellee, then, of course, the privilege of being an appellant. And if the statute has prolonged the capacity of the corporate party to take an appeal, without laying any limitation upon that capacity, it carries with it as one of its necessary incidents, or rather as among its component parts, the authority to assume and perform all the conditions under which the right of appeal is to be exercised.

In this Michigan case the Supreme Court of that state gave a construction to the statute now in question: to the second of the before-cited provisions. This provision, first enacted in 1839, is here cited as sec. 38 of chap. 118 of the Revised Statutes of 1846, and as H. § 8211; by the Supreme Court in this cited case, as sec. 6623 of the Complied Laws of 1871.

In this case, more than three years after the corporate existence of a corporation was annulled, a decree was rendered in its favor, and of this action the Supreme Court says, —

> "There can be no doubt under § 6623 of the Compiled Laws, if that section is applicable, of the duty of the circuit court and of this court to consider this case as in full vitality. That section is express, that a suit pending at the time of the dissolution of a corporation shall continue to final judgment or decree.
>
> "The Compiled Laws of 1871 show a manifest intent to keep alive all causes of action and to allow them to

proceed in the corporate name *after any interval of time.* There can be no doubt of the powers of the corporation to commence legal proceedings in its own name at any time during the three years, and to continue them to a close, unless superseded by trustees or receivers.

"There is, therefore, nothing to prevent the continuance of these proceedings either in the circuit or in this court, or to interfere with their enforcement in the name of the corporation."

This was the construction given by the highest court in Michigan to a statute of Michigan; and this construction governs in the application of this same statute to the question now under consideration.

And aside from the opinion, the mere course of the case itself is controlling of the question now at bar. An appeal was allowed from a decree in favor of a corporation as fully dissolved as is now the Pewabic Mining Company.

Could it be claimed that the dissolved corporation itself would not have been allowed to appeal had it felt itself aggrieved by the decree?

And if competent to take an appeal, was it not of legal capacity to take all the steps and to assume all the obligations necessary to perfect that appeal?

In short, this part of this motion, resting solely upon a single provision of the Michigan statutes, to wit, "the three-years' clause," ignores another provision which governs in this case, that provision which, as construed by the Michigan court, under certain conditions allows actions "to proceed in the corporate name after any interval of time."

But is this question of the present competency of the Pewabic Mining Company as a litigant, a vital question in the present hearing? Can such incapacity, if ascertained, help

at all to validate the sale of the company's property now in question? Suppose the appellant so-called corporation to be wholly extinct as a corporation, exhausted of all corporate vitality, would not that condition itself require that this sale should be set aside, instead of being confirmed?

For the assertion of such incapacity does not rest upon any dissolution of the corporation, alleged to have taken effect since the last action of the court below against this appellant as a subsisting corporation. If this corporation is now completely dissolved and extinct, it was so in 1890, when the mandate of this court went down directing proceedings against it as an existing corporation. Accordingly, if now this court is to pronounce it a dissolved corporation, it must deem all those proceedings as unauthorized, and therefore null and void.

Mumma v. *The Potomac Co.*, 8 Pet. 281 (285, 286).

If the court below, since the mandate went down, has been proceeding against a defendant legally incapacitated from taking and perfecting an appeal, incapacitated by want of legal existence, then those proceedings must be vacated, and the court must stay its hand until a proper defendant or proper defendants can be brought before it; defendants who can defend, even in the court of last resort.

Against a defendant corporation there can be no judgment, said this court in the case just cited. And where a judgment against its adversary was affirmed in this court, there could be no affirmative judgment in its favor, even for costs, as the party prevailing in the court of error. How, then, in a proceeding against it, as a named defendant, can there be any valid decree of sale, or of confirmation of sale? There cannot be any more than against a natural person after

decease. This decease, natural or artificial, being found, no further step can be taken, or can be valid if taken after such decease, until some living representative is brought into court as the succeeding party in this suit. There can be no valid sale where there is no party present fully competent to protect the property (if necessary) from spoliation by a fraudulent sale.

X.

"BECAUSE THE RECORD SHOWS MASON AND SMITH OWN A LARGE MAJORITY OF THE STOCK OF THE DISSOLVED CORPORATION, AND OPPOSE APPEAL."

To this, it would seem sufficient to reply that the record does not show as here alleged. Mr. Dickinson's affidavit, appearing for the first time in connection with the motion to dismiss this appeal, is no part of the record, though it attempts to state what is alleged in some papers filed in the case. But if the record did show that original complainants, now purchasers, of the corporate property, own a majority of the stock of the dissolved corporation, that fact would be no good reason, even on final hearing, for affirming the decree appealed from. Still less would it furnish cause for dismissing an appeal upon motion.

A minority of shareholders, and even a single shareholder of a single share, is entitled to protection against a disadvantageous sale of the corporate property. He is so entitled, even though the sale which is inequitable and to his loss, works to the advantage of the majority of the stockholders as purchasers.

This suit was instituted and this sale has been ordered on a bill brought by a very small and insignificant (in number) minority of the shareholders of the Pewabic Mining Com-

pany; and that minority is no more entitled to the protection of the court, or of the law, than any other minority.

Furthermore, it now appears that as against other shareholders, Mason and Smith now assert their right to appear in this case, in three characters. (1) As complainant shareholders demanding an order of the sale of the corporate property; (2) As purchasers at that sale benefited by a low purchase price. (3) As defendants entitled to prevent the question of the fairness of the sale, or inadequacy of the purchase price, from being heard on appeal.

Further, the bill in this case showing that these complainants, at the expiration of the charter of the defendant corporation, owned a very small minority of the stock; it is pertinent, against their claim of a present ownership of a majority of the shares, to suggest that no transfers of stock of a corporation whose charter has expired, are valid in law.

XI.

The action of the court below on April 27, in refusing to set aside the sale of January 24 and to reopen the biddings, was appealable.

In order to maintain the contrary, two propositions must be established: 1. That the action of the court on March 2, purporting to confirm that sale was valid, notwithstanding its disregard of the prescribed rules controlling the court in these premises; and, 2. That the action of the court on April 27 in the same subject matter was action wholly within the discretion of the court. Both these propositions are necessary to exclude the appellant's right of appeal. Neither is sufficient to that effect alone. If the action of March 2 was invalid in itself, then there is no final confirmation of this sale, save that of April 27, and if that be final, it, of course,

is subject of appeal. And though the action of March 2 were valid, yet, if the refusal of the court on April 27 to set aside that action was not pure matter of discretion, but did really touch the right of the matter, then, from this refusal, appeal clearly lies.

Something will be added later to what has elsewhere been submitted to show that the action of March 2 was invalid in itself. It is now needful only to maintain that, even though a valid decree of confirmation was made on March 2, the action of April 27 was not merely discretionary, but was final, and as such raised a right of appeal.

The court reached its action of April 27 as follows: A petition to set aside the order of March 2 and to order a resale having been filed in court, it was on March 11 ordered that the parties to the suit and the purchasers show cause on March 24 why the petition should not be granted; and these parties having been served with notice, the hearing was from time to time continued till April 27, when not only the petitioner, but this appellant, appeared, the latter as well as the former with an application of its own to have the sale set aside, both of which applications the court denied.

This action of the court seems ample to bring the case within the scope of this rule, to wit, that where a motion to rescind a decree is submitted during the term in which a decree is made, and is entertained by the court, the decree is suspended, and becomes final only when this motion has been heard and acted upon. This is a rule of law well known to this court, having been recognized in the following cases: —

Brockett v. *Brockett*, 2 How. 238 (241).
R.R. Co. v. *Bradleys*, 7 Wall. 575 (578).

That a refusal to reopen a sale, one which in fact had been

confirmed, is a final determination, is well established by the decision of this court in *Butterfield* v. *Usher*, 91 U.S. 246. Says Chief Justice WAITE, "A decree confirming the sale would have been final" (248). Final, as not interlocutory, this language certainly intends; and this is as far as the citation is to be pressed at this moment. For while the plain intent of the decision is that such a decree would be final also in distinction from a determination resting in the discretion of the court making it, that point will be considered in the light of other authorities before pressing this decision in its favor. At present it is sufficient that it is there decided that a refusal to reopen a sale, once confirmed, is not interlocutory.

Clearly, such a determination is not one within the discretion of the court making it. It has never been so regarded either in England or in this country.

If in England the equity practice allows, to some extent, appeals from decrees and orders which are deemed interlocutory, it cannot allow appeals from decrees and orders dependent wholly upon the discretion of the court which makes them. It has no such solecism as that; it being the very essence and marrow of discretionary action that it is not subject to any appellate revision.

Now in England the action of a court in reopening or refusing to reopen a sale, even when the sale has not been confirmed, is subject to revision on appeal.

In *Guest* v. *Smythe*, 5 L. R. Ch. App. 551, no consideration is given to the fact of confirmation as affecting the right of appeal, any more than it affected the merits of the case. And that case certainly determines that the matter of opening a sale after confirmation does not rest in the discretion of the court below, but is subject of appeal; and in the pres-

ent case there is on the record an apparent order of confirmation. See also *Bailey* v. *Maule*, *infra*.

Chancellor WALWORTH recognizes the action of a court upon the question of setting aside a judicial sale as subject of appeal, and not within the free discretion of the court taking the action. *Delaplaine* v. *Lawrence*, 10 Paige, 602. And this court acted in accordance with his opinion, and declined to revise such action except after full hearing upon the merits.

Blossom v. *R.R. Co.*, 1 Wall. 655; (s.c.) 3 Wall. 196.

In this country it seems well established that a decision of the question of opening the biddings, or ordering a resale of property exposed to sale under an order of the court, is subject of appeal.

In 1834 an appeal was entertained by the Court of Appeals of New York from an order of the chancellor setting aside such a sale.

Collier v. *Whipple*, 13 Wendell, 224.

Fifty years later, the appellate court of Michigan set aside such a sale.

Nugent v. *Nugent*, 54 Mich. 557.

Meanwhile the question whether such action was the subject of appeal had been directly brought before the court of last resort in New York, upon a motion to dismiss an appeal taken from a refusal to set aside a sale. The question was fully considered in the opinions given sustaining the appeal taken. Though the action for a resale "was addressed to the discretion of the chancellor, still it was [considered] of a character which might and should be reviewed." It was not "a mere question of practice;" "not a question of practice, but of principle." The chancellor himself said that the allowance

of such appeals "was the only mode in which the court of chancery could be preserved."

In New Jersey the same question has been raised, in the same direct manner, by motion to dismiss an appeal urged upon the same ground, to wit, "that the order appealed from was on a matter of practice, and within the discretion of the chancellor," and decided in the same way, the motion to dismiss being denied; the chancellor giving the opinion, and the whole court concurring with him.

National Bank of the Metro. v. *Sprague*, 21 N.J. Eq., 6 C. E. Gran. 458.

The conclusion reached in this opinion rests upon an extensive examination of both the English and American cases. Upon the authorities then, upon adjudged law, it stands established that the question of reopening a judicial sale is not a question of mere practice but of substantive right.

But there is a feature of this matter which, of itself, aside from the authorities, determines that it is not one to be decided, conclusively, by the discretion of the court to which it is originally presented. It is undoubted law that an application to set aside a judicial sale may be presented in an original proceeding, certainly by bill in equity. Indeed, the objection has been made that in such a case "the ground of complaint is such as is properly the foundation for relief by bill;" definitely, that it is "not a matter which is addressed to the mere discretion of the court." And while the court to which this objection was presented refused to sustain it as effective, it did not deny that the ground of complaint might be "properly the foundation for relief by bill." It admitted that it might be thus presented as the basis of an original, independent suit, the very cause of action.

Campbell v. *Gardner*, 3 Stockton, 423.

Now whatever is of substance enough to constitute the basis of a suit, whatever is in itself cause of action, must be of the right of the matter, and cannot be a mere question of practice, wholly addressed to the mere discretion of the court. It must be subject of legal right, and thus open to appellate revision.

If now it be urged by these appellees that the matter at bar, being substantial cause of action, can be brought into a judicial forum only by independent suit, by original proceeding, and not by motion or petition in this pre-existing litigation, the case just cited furnishes a conclusive answer to this contention. That was the very point raised in that case and overruled. The chancellor in his opinion cites the English cases, *Watson* v. *Birch*, 2 Ves. Jr. 51, and *Morice* v. *Bishop of London*, 11 Ves. Jr. 57, and three New York cases, — *Tripp* v. *Cook*, and *Collier* v. *Whipple*, *ubi supra*, and *Requa* v. *Rea*, 2 Paige, 143. He then states the result of his examination as follows: "In looking through all the cases, I do not find anything to sanction the position taken by the complainant's counsel, that because a deed has been delivered, the court cannot remedy any wrong that has been committed, on an application by petition of the party aggrieved." *Campbell* v. *Gardner*, 3 Stockton, 423. Earlier in the opinion the phrase is in the alternative, "upon motion or petition;" and in the English cases, as there stated, the presentation was "on motion," so that the applicant is not restricted to the form of petition.

Here it is worthy of remark that the mere consideration of this question by an appellate court has a bearing in the present argument. The appellate court have considered as a question of law what was the proper form in which to proceed for the setting aside of a judicial sale. How could this question of the form of proceeding be entertained as a ques-

tion of law, if the matter of the proceeding itself was not substance of law, but only mere fringe and hanging of discretion?

In this condition of the law upon this question, there is no restriction to be placed upon the expession of this court in the case of *Butterfield* v. *Usher* as before quoted. When its late chief justice spoke of the confirmation of a judicial sale as final, it is clear that he used the word "final" in its full meaning, both as not interlocutory and as not matter of discretion.

It is now to be noticed that Mr. Chief Justice WAITE had in his mind, when he used that language, not a direct and formal order of confirmation, such as was made in the present case on March 2, but an indirect confirmation, arising from a refusal to set aside, such as was here made on April 27. He says, —

> "The decree here appealed from disposed finally of a motion made in the case, but not of the case itself. It simply set aside one sale that had been made, and ordered another. A decree confirming the sale would have been final."

That is, if the decision had been a refusal to set aside, there would have been a right of appeal. If the motion had been disposed of in favor of Butterfield, the purchaser; Usher, the owner, could have taken an appeal. The situation thus supposed is the actual situation in the present case. Here the decision upon the petition and motion was in favor of the purchasers, and the appeal is brought by the owners.

The current of authorities, English and American, which is well exhibited and well summed up in the case of *Campbell* v. *Gardner*, before cited, plainly decides another question which has arisen in this case. This is the question

whether Marcus, the offerer of the advanced bid, in making that offer after confirmation, was guilty of laches.

The authorities concur that the previous fact of formal confirmation, though final and absolute on its face, does not make a subsequent application to reopen the biddings too late. The English Chancery Court entertained motions to reopen the biddings after confirmation. *Watson* v. *Birch*, and *Morice* v. *The Bishop of Durham*, *ubi supra*. So did the Chancery Court of New York, and the Court of Appeals sustained the chancellor in this course. *Tripp* v. *Cook; Collier* v. *Whipple*, and *Requa* v. *Rea*, *ubi supra*. And the New Jersey chancellor, who holds that the delivery of a sheriff's deed, upon a sheriff's sale, is the equivalent of a decree of confirmation of a chancery sale, declares that all the cases, including those of chancery sales, required him to allow an application to set aside a sheriff's sale after deed delivered, as seasonably made. He would entertain and consider such application. He could not reject it on the ground of laches.

But if any order of confirmation would bar out by limitation a subsequent application to set aside, it can be only such an order as the court is authorized to make under the rules which govern its practice. Such order must conform to those rules, especially so far as those rules forbid any haste in the proceeding. All the time prescribed for the protection of the adverse party must be allowed to him. None of its days must be cut off. In the present case there was on March 2, and at no time until April 27, at earliest, any order of confirmation of this sale, thus made in conformity to the rules of court.

Rule 83 treats of the "return and entry of master's report." It prescribes that "the parties shall have one month from the time of filing the report to file exceptions thereto."

Such exceptions may be filed at any time during that prescribed month. That is to say, while it may be that leave of court would be necessary to the filing of additional exceptions after one series had been filed, it undoubtedly would be inequitable to refuse, merely because of such filing, a request for such allowance made within the month. The privilege is substantially to extend through the month.

At the end of the month, whether exceptions have or have not been filed meanwhile, the report goes over to the next succeeding rule day for hearing, or for confirmation without hearing, as the case may be. This next succeeding rule day was April 6.

The first departure in the present case from the course prescribed by this rule appears to have been in three days after the filing of the master's report, to wit, on February 7, when a confirmation *nisi* was ordered. Under this order, the sale was to stand confirmed, unless exception was filed in eight days, — by February 15. This order was doubtless made under a misapprehension as to the practice in this matter authorized in the court below. Such an allowance of only eight days is found in a New York case in 1834, — *Collier* v. *Whipple*, 13 Wend. 142, — and there was some reason to suppose that it was good practice in 1890 in the Circuit Court of the United States for the Western District of Michigan. But the supposition was incorrect. Here was a confining of this appellant to the short period of eleven days from the entry of the master's report for the filing of exceptions thereto.

And then, before the month had expired, — the shortest month of all the year, — the report was taken up and confirmed. There was a weighty special fact that aggravated this — doubtless inadvertent — haste. The accepted bidders were a party to the suit. They had originally put

the court in motion to a sale. They had later, by their advice, given in their apparent character as sellers, hurried the court forward in selling, when the state of the market justified delay. Thus, on March 2, there was, according to the undisputed maxims of equity, an imperative necessity for the closest scrutiny into the real character of the transaction; a necessity which made suspicion a duty, even if we admit that the facts appearing did not require the sale to be set aside without further examination, or without entertaining any suspicion as to the actual facts.

What would be the first essential of such closest scrutiny? Evidently that there should be no haste in confirming a sale made under such appearances. That the action of the court should be, and should plainly show itself to be, deliberate, till due demand for deliberation was exhausted. There was actual necessity for this deliberation in the present case, as the record shows.

The circular addressed to the stockholders of the Quincy Mining Company, which disclosed the relations between that company and these purchasers, was not issued till February 26, eleven days after the expiration of the time allowed to this appellant to raise objections to that purchase. This circular bore date of New York city, only four days before March 2, when that purchase was confirmed. The record does not show how early before April 27 that circular came to the knowledge of parties interested to procure a reopening of the biddings. But the chance of its coming to their knowledge after March 2, and before April 6, five weeks, was much greater than the chance of its so coming in the four days between its first issue and March 2.

Further, the order of March 2 gives as a *raison d'etre* that no motion had been made for an opening of the biddings. The record does show, however, that such motion

was then in the making and that it was actually made before April 6, the earliest date on which this confirmation could lawfully have been made.

There are other circumstances going to show the importance to this appellant of the five weeks of which the appellant was deprived by the order of March 2. The purchase involved the raising of a large sum of money. The distant cities of Boston and New York must be looked to for bidders. The condition of the money market, and still more of the copper market, could but improve between March 2 and April 6, as the record shows.

Within a reasonable time, the Pewabic Mining Company had a right to wait for the appearance of an advanced bid, before exercising its right of election. It did make such election upon the appearance of that bid, and before the court was ready to act upon the advanced offer.

This argument ought not be closed without presenting another view of the question under discussion.

It is well established in England and in the United States that a setting aside, or a refusal to set aside, a judicial sale, an opening of, or a refusal to reopen, the biddings, is not necessarily, as such, action within the discretion of the court taking or refusing to take it. It does not necessarily stand upon the same basis as a granting of, or a refusal to grant, a new trial. On the other hand, it is, in general, subject of appeal. *Ryder* v. *Earl Gower*, 6 Brown's Parl. Cases, 306; *Bailey* v. *Maule*, as stated in *Bignold* v. *Springfield*, Cl. & Fin. 70, in note to p. 121; *Guest* v. *Smythe*, 5 L. R. Ch. App. 551; *Collier* v. *Whipple*, 13 Wend. 221; *Tripp* v. *Cooke*, 26 Wend. 142; *Bank* v. *Sprague*, 6 C. E. Green, 458; *Campbell* v. *Gardner*, 3 Stockton, 423; *Nugent* v.

Nugent, 54 Mich. 557; *Atty. Gen.* v. *Roanoke*, 86 N. C. 408; *Wilson* v. *Shields*, 59 Tenn. 3 Jere. Baxter, 65.

In the opinion reported, 21 N. J. Eq. 458, there is an intimation that, if the only reason presented in support of the application for a reopening be the inadequacy of the price obtained at the previous sale, the action of the court is wholly discretionary. But the decided cases hardly support the view.

In England, where the rule of decision appears to be in favor of reopening the biddings before confirmation of the sale, upon an offer of ten per cent in advance, this privilege appears to be regarded as a subject of legal right, and not of judicial discretion.

Certainly, the administration of this ten per cent rule in Tennessee, where it has been adopted, is as matter of legal right, and therefore subject to appellate revision.

Wilson v. *Shields*, 59 Tenn. 65.

The same construction appears in Michigan, where the appellate court set aside a sale upon merely an advanced offer.

Nugent v. *Nugent*, 54 Mich. 557.

The same construction is followed in North Carolina, where the before-mentioned English rule is not cited in its support.

Atty. Gen. v. *Roanoke Nav. Co.*, 86 N.C. 408.

A refusal to reopen a sale, which this court contemplated as final and thus subject of appeal, was the refusal of an application based merely upon an advanced offer. The reopening there actually made, was ordered, adjudged, and decreed "upon the offer of the defendant making an advance on the sale heretofore made." *Butterfield* v. *Usher*, 91 U.S. 247. Yet the late chief justice gives no intimation that this

ground of the application in any way affected the character of the proceeding. Without noticing that circumstance, he declares that, if the decision had been the opposite of what it was, there would have been a right of appeal. "A decree confirming the sale would have been final," are his words, as before quoted. And there is a decision of a chancellor of England directly supporting this statement as applied to an application for a resale based solely upon an advanced offer. In *Chatham* v. *Grugeon*, where the sale had been absolutely confirmed, —

> "Mr. Ainge, for the purchasers, contended that the practice is not to open the biddings after the report is confirmed, unless there are special circumstances, and that upon that ground the former motion was refused. The Lord Chancellor (LOUGHBOROUGH) said, the ground upon which the former motion was rejected was not that now suggessted, but that the sum was not sufficient, and granted the motion." (5 Vesey, Jr. 86.)

But, supposing it to be true that inadequacy of price is not of itself legal cause for setting aside a judicial sale, this principal is to be confined strictly to cases where such inadequacy is the only ground of action presented to the court. It has no force where inadequacy of price is supplemented by some other reason, which is substance of law. The adjudged cases are unanimous to this effect.

The English rule, even when stated in favor of the rights of the purchasers, admits the correctness of the assertion just made. Says the chancellor of New Jersey, —

> "According to the practice in the Court of Chancery in England, if parties apply to open biddings before the report is confirmed, it is a matter of course to open them on payment of costs and making a deposit; but

after confirmation, a special ground upon evidence is required."

Campbell v. *Gardner*, 3 Stockton, 423.

This "special ground" may be any ground which goes to show that "the sale was made contrary to the requirements of law." *Nat. Bank*, &c., v. *Sprague*, 6 C. E. Green, 21 N. J. Eq. 458. When the application is "based upon the illegality of the sale," then the chancellor "has no discretion in the decision, but must determine according to the settled rules of law and equity." For, there the question is of "a right to have the sale set aside."

Whatever general rule there may be giving weight to an order of confirmation, it is clear that "if fraud appears, that suspends the operation of the general rule." *Watson* v. *Birch*, 2 Ves. Jr. 51. And fraud is not "the only possible exception" to the operation of this general rule (id.). It is enough that there has been "fraud or accident which has prevented a fair sale of the property;" "an unlawful combination to prevent competition" (3 Stockton, 423); any "misconduct upon the part of the individual who has the benefit of the purchase" (*White* v. *Wilson*, 14 Ves. Jr. 152); any "particular principle arising out of his character as connected with the ownership of the estate, or some trust or confidence, or his own conduct in obtaining the report" (*Morice* v. *The Bishop of Durham*, 11 Ves. Jr. 57); "some dealings," raising suspicion, between the purchasers and persons having part in the sale (*Bailey* v. *Maule*, *ubi supra*); a purchase by "a person who has the conduct of a sale" (*Guest* v. *Smythe*, 5 L.R. Ch. App. 551; *Thompson* v. *Mount*, 1 Barb. Ch. Pr. 607); where "the person who purchased the property under the sale is himself the person through whose instrumentality the decree and sale were obtained." (Talbot v. Minett, 6 Irish 83.)

And wherever allegations such as these are the basis of the application for a resale of the property, then, certainly,

the action upon that application is action upon a subject of lawful right, and not of mere individual discretion; and is open to appellate revision alike whether such action is taken before or after the sale has been confirmed. The English and American decisions alike go to this extent. If there is any exception, it is that raised by the decision in *Butterfield* v. *Usher*, the exception of a resale ordered, as not being final within the statute regulating appeals to this court; a refusal of such order being at the same time expressly declared to be thus final, within that statute.

This appears in the following cases, already cited: *Ryder* v. *Earl Gower*, *Bailey* v. *Maule*, *Guest* v. *Smythe*, *Collier* v. *Whipple*, *Tripp* v. *Cooke*, *Bank* v. *Sprague*, *Campbell* v. *Gardne*

Indeed, this matter may be summed up thus: The principle so well known in this court, which treats the matter of granting, or refusing to grant, a new trial as not final as a judgment or decree, has never held good in the matter of setting aside, or of refusing to set aside, the confirmation of a judicial sale. It did not hold good in England prior to the adoption of the Constitution of the United States; and it has not there held good since that event. And it has never held good in the United States. Equity procedure in both countries has regarded this matter *sui generis*, as decision of substantial right, though made upon interlocutory proceedings, by motion or petition. The reason for this regard is not far to seek. It is because the right to have such sale set aside may be enforced, after confirmation, by original proceeding by a new suit; and when, for equitable convenience, this substantial right is allowed to be litigated by interlocutory form, the right comes to give character to the form, instead of the reverse, — and action, in form interlocutory, becomes in fact final.

In the present case, even if there were a valid confirmation of sale before April 27, there are apparent on the record matters of improper conduct in this sale which place the appellate jurisdiction of this court over the case, beyond doubt.

THOMAS H. TALBOT,
ROBERT M. MORSE,
J. LEWIS STACKPOLE,
RUSSELL C. OSTRANDER,
of Counsel.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

IN EQUITY.

No. 1416.

ALFRED A. MARCUS, *Apellant*,

v.

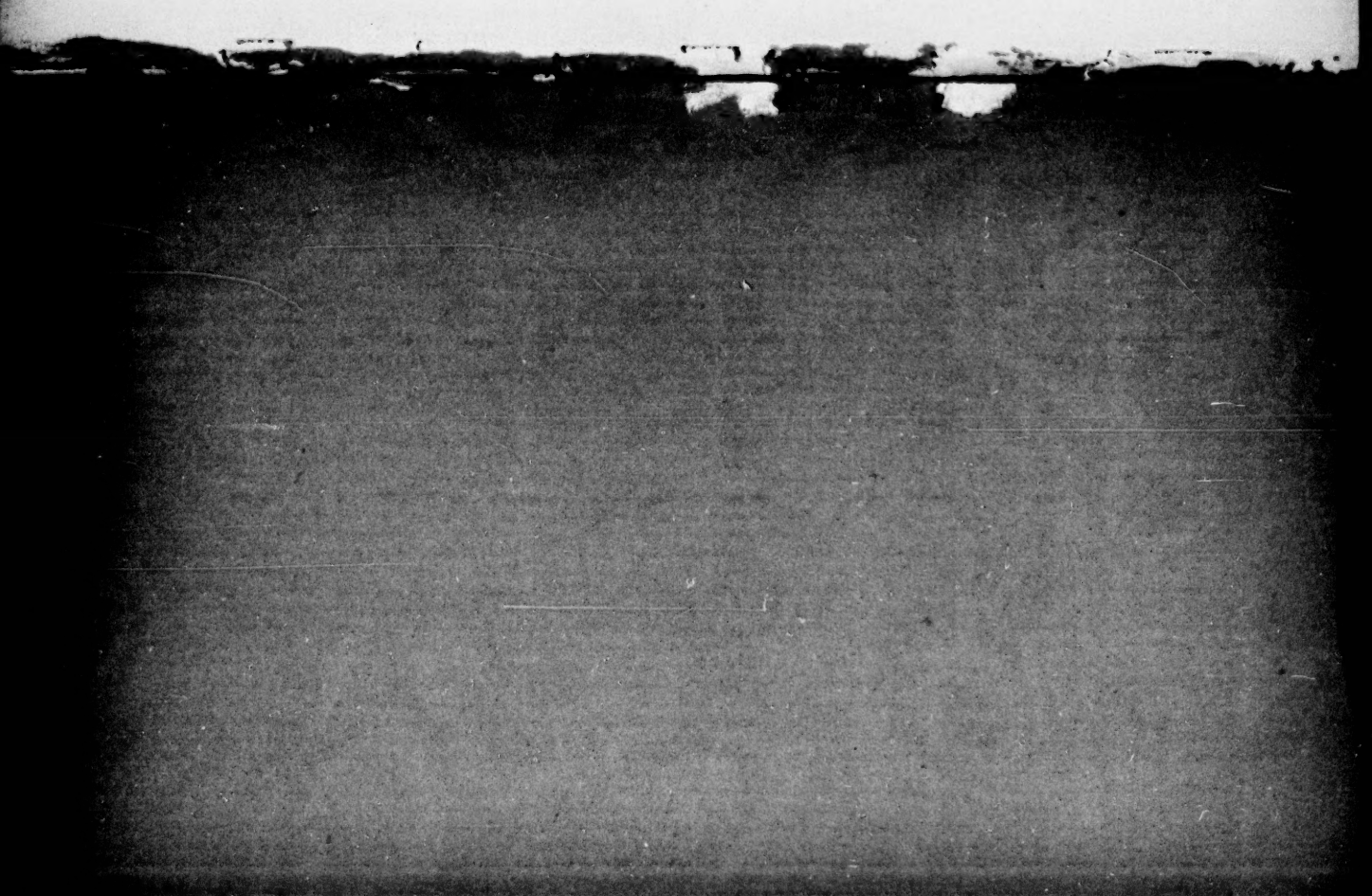
THOMAS H. MASON ET ALS., *Appellees*.

SAME *v.* SAME.

(TWO APPEALS.)

BRIEF FOR ALFRED A. MARCUS, APPELLANT.

ROBERT M. MORSE,
J. LEWIS STACKPOLE,
RUSSELL O. OSTRANDER,
CHARLES E. HELLIER,
of Counsel.



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BRIEF FOR ALFRED A. MARCUS, APPELLANT.

STATEMENT OF THE CASE.

This case arose on a petition of Alfred A. Marcus to intervene in suit 1340, *Pewabic Mining Company, Appellant*, v. *Thomas H. Mason et als., Appellees*, which is argued herewith.

The complainants in No. 1340, *Mason et al.*, obtained a decree of the Circuit Court of the United States for the Western District of Michigan for the sale of the property of the Pewabic Mining Company, and that decree was affirmed on appeal by this court (133 U.S. 50). The special master in that case thereupon advertised the property to be sold at Houghton, Michigan, December 20, 1890. On defendants' petition and representation that a sale of the property at that

time would be made at a great sacrifice, the court ordered a postponement to January 24, 1891 (Rec. pp. 43–50).

The defendants made a further attempt to secure postponement of the sale, but it was unsuccessful, and the sale took place January 24, 1891. The property was struck off to the complainants Thomas H. Mason and William H. Smith for $710,000.

The day before the sale, to wit, January 23, 1891, Alfred A. Marcus, the petitioner, appellant, a resident of Boston and the owner of three thousand shares of stock of the Pewabic Mining Company, who had fully intended to be present at the sale and bid on the property, and had endeavored to keep himself informed as to all movements in reference to the sale, first learned that the sale would take place on the following day from Reuben E. Demmon, president of the Howard National Bank of Boston (Marcus' affidavit, Rec. p. 133; Demmon's affidavit, Rec. p. 109). Marcus was an Orthodox Jew, and has rigidly abstained from doing any business himself or permitting any business to be done in his behalf on Saturday, the Jewish Sabbath. Accordingly, when he learned that the sale was to take place the next day, the 24th, the same being Saturday, he attempted to secure a postponement. He telegraphed to the special master, requesting a postponement, and stating that his Jewish friends in London would buy the mine, but that they would not attend on the 24th, as the same was the Jewish Sabbath. At the same time he offered to pay the expenses of postponement (Rec. p. 75). This telegram was received late in the evening of the 23d, but no attention was paid to it (Rec. p. 75).

Two days after the sale, to wit, January 26, Marcus telegraphed the master, protesting against the sale and claiming the right to bid $721,000 (Rec. p. 75).

February 4, 1891, the master filed his report of the sale (Rec. p. 75).

February 7, the court, on application of complainants, entered an order that the sale be confirmed unless cause to the contrary was shown within eight days thereafter (Rec. p. 77).

February 13, the respondents filed objections to confirmation of the sale (Rec. pp. 78, 79).

February 26, the president of the Quincy Mining Company issued a circular informing the stockholders of that company that Mason and Smith, the complainants in No. 1340, had bought the Pewabic property, January 24, for the purpose of transferring it to the Quincy Mining Company, and that the total cost, including the expenses, was estimated at about $800,000, and that Mason and Smith proposed to convey the property to the company, and that the directors proposed to issue to Mason and Smith therefor ten thousand (10,000) shares of stock in the Quincy Mining Company (Rec. p. 111).

March 2, the Circuit Court entered a decree confirming the sale (Rec. p. 81).

This decree was apparently entered under what had been known as Rule 19 of the Equity Practice of the 6th Circuit, which rule read as follows: —

> "After the report of a sale by a master in chancery is filed, either party may have an order of course to confirm the same unless cause to the contrary thereof be shown within eight days after notice of its being filed; and if no exceptions are filed and served within that time, the order shall become absolute of course without further order; or either party may file exceptions, and have an order of course to confirm the report

> so far as the report is not excepted to and with the like effect. No notice of filing the report shall be necessary in cases where the bill has been taken as confessed."

This rule was dropped in the revision of the rules in 1887, undoubtedly as conflicting with Gen. Eq. Rule 83, which latter rule provides that "the parties shall have one month from the time of filing the report to file exceptions thereto; and if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule day after the month has expired."

Marcus, assuming that the report of the master would be dealt with under the Gen. Eq. Rule 83, and that the sale could not be legally confirmed at least before April 6, after advising with counsel in regard to his rights, signed and made oath, February 26, to his first petition, which was filed March 3, 1891 (Rec. pp. 81, 82).

March 11, Marcus filed his second petition (Rec. p. 86).

March 13, the court issued an order to complainants to show cause March 24 why the prayer of Marcus' petition (for leave to intervene, and that the sale be set aside and a resale ordered) should not be granted (Rec. p. 86).

March 14, this order was served on complainants' solicitors (Rec. p. 4).

March 24, the hearing on order to show cause was postponed to April 27.

March 25, the complainants, notwithstanding the pendency of these petitions and with evident purpose to forestall and influence the action of the court, obtained the execution of the deed of the Pewabic property from the special master to them in Michigan, and on the same day in New York executed a deed of the same property to the Quincy Mining

Company for the nominal consideration of $710,000 (Rec. pp. 112–119).

March 28, these deeds were acknowledged.

March 30, both these deeds were recorded.

April 6 was, as above stated, the first rule day at which the sale could have been confirmed under General Equity Rule 83.

April 22, the defendants filed a motion to set aside the sale, especially for reasons stated in the Marcus petition (Rec. p. 95).

April 27, a hearing took place, and the court denied the petition of Marcus and the motion of defendants (Rec. pp. 135, 136).

June 12, the appeals of Marcus from the decrees of March 2 and April 16 were filed and allowed, and bonds were duly filed (Rec. pp. 264–265.)

SPECIFICATION OF ERRORS.

It is respectfully submitted that the court erred in dismissing the petition of the applicant Marcus for a second sale:

I. Because, as a large stockholder, and as making a *bona fide* offer of a great advance over the amount bid at the sale, he had a right to intervene.

II. Because the sale to the complainants Mason and Smith was invalid.

(1) Being complainants, they had no right to bid without leave of court previously obtained, and they had not secured that right.

(2) They did not, prior to the sale, disclose to their co-partners the information which they had as to the action of

the Quincy Mining Company, and their understanding with that company.

III. The master's report of the sale was not confirmed in accordance with General Equity Rule 83.

(1) The decree of March 2 was made before the time when such decree was authorized by said rule.

(2) The order of April 27 did not in terms confirm the sale.

IV. If the sale had not been confirmed prior to the filing of Marcus' petition, the *bona fide* offer of so large an advance price was proper ground for opening the sale and ordering a resale.

V. Even if the sale had been confirmed prior to the filing of Marcus' petition, the action of the court at the same term in entertaining the petition and in directing order of notice to issue thereon, suspended the operation of the order of confirmation.

VI. But, even if the sale had been regularly confirmed and the decree of confirmation had become of full effect, under all the circumstances of this case the sale should have been opened and a resale ordered.

VII. The petitioner, Marcus, has not been guilty of laches which should defeat the granting of his petition.

VIII. The Quincy Mining Company are not innocent purchasers for value without notice, but took their conveyance with knowledge of all the infirmities in their title.

ARGUMENT ON THE LAW.

I.

THE PETITIONER MARCUS, AS A LARGE STOCKHOLDER AND AS MAKING A BONA FIDE OFFER OF A GREAT ADVANCE ON THE AMOUNT BID AT THE SALE, HAD THE RIGHT TO INTERVENE.

(1) *Marcus owned* 3000 *shares of stock.*

The first petition of Alfred A. Marcus was sworn to February 26, 1891, and filed March 3, 1891. It states that he was then the owner of 3017 shares of stock in Pewabic Mining Company (Rec. p. 81).

The second petition of Marcus was filed March 11, 1891. At that time, by his sworn statement, he owned 3000 shares. There is no attempt to control Marcus' affidavits as to his ownership of the stock by any direct evidence. It must be assumed, therefore, that this fact is true.

(2) *The offer of Marcus to bid at least* $800,000 *at a resale of the property, and to pay all expenses incident to the resale, was bona fide, and guaranteed by responsible parties.*

(*a*) Marcus himself makes affidavit to this point (Rec. pp. 85, 133).

(*b*) Six responsible men joined in a letter to the counsel for Marcus, April 1, 1891, stating that, upon a resale, they would give $800,000 for the property, and as an earnest thereof would pay into court $80,000 as an advance of 10 per cent upon such bid and as a fund to cover the expense of the resale; and further, that they would become sureties on a bond that a starting bid of $800,000 should be made at the resale (Rec. p. 97).

(*c*) The amount of this bid was subsequently increased to $900,000, and in support there were filed the following affidivits: —

Francis V. Parker, one of the signers of the above letter of April 1, made oath, April 26, 1891, that he was a stockholder in the Pewabic Company, was worth at least $150,000 above all liabilities, would respond to any obligation which he might incur on account of said purchase, and would furnish the sum of $112,500 towards the $900,000 which he agreed might be paid at a resale of the property (Rec. p. 96).

Daniel L. Demmon, another of the signers of the letter of April 1, made oath, April 6, 1891, that he was worth at least $250,000 above all liabilities, and that he would furnish $112,500 towards the $900,000 which he agreed might be bid at a resale of the property (Rec. p. 107).

Edward E. Pratt, another of the signers of the letter of April 1, made oath, April 6, 1891, that he was worth at least $250,000 above all liabilities, and that he would furnish $225,000 towards the sum of $900,000 which he agreed might be bid at a resale of the property (Rec. p. 108).

Charles A. Prince, another of the signers of the letter of April 1, made oath, April 6, 1891, that he was worth at least $250,000 above all liabilities, and that he would furnish $225,000 toward the sum of $900,000 which he agreed might be bid at a resale of the property (Rec. p. 110).

Irving A. Evans, another of the signers of the letter of April 1, made oath, April 6, 1891, that he would respond to any obligation which might be incurred by him in respect to such purchase, and that he would furnish the sum of $112,000 towards the sum of $900,000 which he agreed might be paid at the resale (Rec. p. 98).

Mr. Prince further made affidavit, April 6, 1891, that *J.*

Otis Wetherbee, another of the signers of the letter of April 1, was, to the knowledge of the affiant, worth $250,000 above all liabilities (Rec. p. 106).

The above affidavits, which of course represent the minimum estimate of the financial strength of the parties who were and are ready to sustain Mr. Marcus in making a starting bid at a resale, largely in excess of the amount at which the complainants Mason and Smith bid off the property, and in providing the funds necessary to cover the expenses of a resale, abundantly sustain the good faith of Mr. Marcus' application and promise, and should satisfy the court that if a resale is ordered it will certainly result in a large addition to the fund to be distributed under the order of the court.

(*d*) The complainants have sought to control the above evidence as to the *bona fides* and financial strength of Marcus by certain counter-affidavits; but these, it is submitted, are irrelevant and may be disregarded:

1. Affidavit of *John B. Fitzpatrick*, deputy sheriff, that on September 10, 1890, he attached the household furniture of Marcus on a suit in favor of one Charles A. Morss, wherein damages to the amount of $7000 were claimed, and that he removed this attachment by direction of plaintiff's attorneys, October 2, 1890, when a satisfactory bond was given (Rec. pp. 127, 128, 129).

This suit was six months before Marcus filed his petition for leave to intervene. It does not appear what has become of the action or what issues were involved or what were the merits of the case. The evidence did, however, show Marcus' financial condition and credit, in that he was able to give and did give a bond to perform the judgment in the case.

2. Affidavit of *John F. Brown*, clerk of Municipal Court of Boston, that certain judgments and executions had been

rendered against Marcus in that court between December 22, 1888, and March 19, 1891 (Rec. pp. 130, 131). The precise date of none of these judgments is given. For aught that here appears, they may have all been rendered in 1888 or 1889, more than a year prior to the date of Marcus' intervening petition in this case. But whatever the date, they have not the most remote bearing on the question of Marcus' actual condition when he brought this petition, still less on whether he owned the amount of stock represented and could secure the necessary backing for his bid.

3. Affidavit of *Charles W. Kimball*, assistant register of deeds, Suffolk county, that there were on March 20, 1891, certain undischarged attachments on the real estate of Marcus in that county. The fact of the attachments and the amount of them, are some evidence of the supposed value of Marcus' real estate, otherwise they have no significance (Rec. pp. 132, 133).

The above testimony is entirely irrelevant to the issue as to Marcus' ability to support his proffered starting bid. He might have been subjected to numerous suits and attachments, and yet be fully able to carry through the offers which he made in reference to the purchase of the mine.

(*e*) The good standing of Marcus in Boston, his large business transactions, especially in the purchase of real estate, and his consistent record as an Orthodox Jew, are abundantly shown by the affidavits of Charles H. Allen, president of the Central National Bank and of the Home Savings Bank (Rec. p. 99); Brice S. Evans, agent of and large dealer in real estate (Rec. p. 99); Horace S. Crowell, auctioneer and dealer in real estate (Rec. p. 100); Charles O. Billings (Rec. p. 101); Lorin L. Fuller, ex-mayor of Malden, and large

dealer in real estate (Rec. p. 102); Walter R. Dyer (Rec. p. 103); F. G. Storey, superintendent of Security Safe Deposit Vaults (Rec. p. 104); Albert R. Whittier, dealer in real estate (Rec. p. 105).

3. (*a*) This appellant, as a stockholder in the Pewabic Company, and consequently interested in the result of the sale, had a right to intervene in order to protect his interests. This right was recognized by the court below in entertaining his petition and in issuing an order of notice upon the same. The numerous affidavits printed in the record show that the hearing of the petition was upon its merits. Moreover, the fact that the appeals of Mr. Marcus were allowed after the hearing upon the merits of his petition, is a recognition of his right to intervene.

In *Sage et al.* v. *Central Railroad of Iowa et als.*, 93 U.S. 412, complainants were allowed to intervene in a foreclosure suit brought by the Farmers Loan and Trust Company, as trustee for the bondholders against the defendant railroad company. They were minority bondholders who were not satisfied with the conduct of the foreclosure suit. They filed a petition to intervene and object, and were allowed so to do for the purposes of an appeal. The case came before this court on motions to vacate a *supersedeas* and dismiss the appeals of the intervenors. The motion to dismiss the appeals was denied. The court, Mr. Chief Justice WAITE, said, —

> "The appellants by the order of January 14 became parties to the suit for the purpose of an appeal. This order, having been made at the same term in which the decree was entered, was within the power of the court; and although it does not appear whether they were admitted as plaintiffs or defendants, it was sufficient to

enable them to prosecute an appeal for the protection of their interests. Under this authority their appeal has been allowed and perfected. Whether this brings up the whole of the case or only a part, it is not necessary now to consider. It is clear that these parties have been allowed their appeal, and that the case is here to the extent that is necessary for the protection of their interests. It is their separate appeal within the rule as to the form in which a severance may be obtained which is laid down in *Masterson* v. *Herndon*, 10 Wall. 416."

(*b*) This appellant had the right to intervene in order to ask for a resale of the property upon a *bona fide* offer of a largely increased bid. Such has been the practice in petitions on opening judicial sales in the federal courts of the United States and in England.

In *Butterfield* v. *Usher*, 91 U.S. 246, the complainant was allowed to intervene in a suit in equity in which a decree directing the sale of certain lands was made. The complainant was the purchaser at a judicial sale under the decree, which sale was set aside upon an advance bid and a resale ordered. The complainant thereupon filed a petition as intervenor for the protection of his interests as purchaser.

In *Blackburn* v. *Selma Railroad*, 3 Fed. Rep. 689, a third party who came in with a largely increased offer was allowed to intervene to ask for a resale.

The English practice on March 2, 1842, was well stated by HAMMOND, D.J., in *Blackburn* v. *Selma R.R. Co.*, *ubi supra*, as follows: —

"In England, before the new practice was adopted, a third person could, upon no other ground than that he offered an advance of price, provided it was a consider-

able advance, intervene and set the sale aside, he paying all the expenses which the previous purchaser had incurred, and the property was put up for sale upon the advance price."

In the following cases, third parties were allowed to intervene and set the sale aside: —

Lefroy v. *Lefroy*, 2 Russ. 606.
Power v. *Power*, 3 Ir. Eq. 511.
Gorman v. *Brown*, Sau. & Scul. Ir. Rolls, 154.
Biggs v. *Rowe*, Sau. & Scul. Ir. Rolls, 152.

II.

THE SALE TO MASON AND SMITH, AS THEY WERE THE COMPLAINANTS IN THE CASE, WAS INVALID.

For the argument of this point, the court are respectfully referred to pages 24–45 of the brief of the appellants in the case of *Pewabic Mining Co.* v. *Mason*, No. 1340, which is argued herewith.

III.

THERE HAS NOT BEEN A VALID CONFIRMATION OF THE SALE.

As shown in the statement of facts prefaced to this brief, the first rule day at which the report of the sale could properly have been confirmed under Equity Rule 83 was Monday, April 6.

It will be argued that on March 2, the date of the entry of the decree, all the parties to the record had filed their objections to the master's report of the sale, and that these objections were overruled, and that there was no reason therefore why the sale should remain longer unconfirmed. The answer to this argument, however, is, that all the par-

ties who had a right to a reopening of the sale had not appeared and that their objections had not been overruled. This appellant had not appeared. He had a right to appear, and this right was recognized by the court in entertaining his petition and in issuing the order of notice thereon. The provisions of Equity Rule 83 are explicit, and are intended for the protection of every party who has the right to appear in an action and object to a report of a master. The fact that the parties to the record appear and object and that their objections are summarily overruled, cannot deprive of their rights others who appear within the time fixed by the rules of court. The court below, in confirming this sale, evidently followed what had been Rule 19 of the equity practice of the 6th circuit, without observing that that rule was no longer in force. This is shown by the terms of the decree entered February 7 (Rec. p. 75), the conclusion of which is, —

> "It is ordered that said sale and all things thereto pertaining be and stand confirmed, *unless cause to the contrary be shown within eight days from this date.*"

In reference to the obsolete Rule 19, the appellants beg to print herewith a note from the clerk of the Circuit Court for the 6th circuit:

> Chas. L. Fitch,
> Clerk U.S. Circuit Court.
>
> Grand Rapids, Mich., Feb. 11, 1892.
>
> C. E. Hellier, Esq., Boston, Mass.
>
> Dear Sir, — The change in court rules of which you speak was a part of the general revision of the court rules, ordered to take effect on the third Monday in

April, 1887. I understand that in making this revision this particular change was made because the judges thought that the old Rule 19 conflicted with Gen. Eq. Rule 83. But no reasons for any of the changes made were filed.

Yours truly,

CHAS. L. FITCH.

*

IV.

IF THE REPORT OF THE SALE HAD NOT BEEN CONFIRMED PRIOR TO THE FILING OF THE PETITION OF THIS APPELLANT, THE BONA FIDE OFFER OF SO LARGE AN ADVANCE PRICE WAS PROPER GROUND FOR OPENING THE SALE AND ORDERING A RESALE.

Under the practice of the English High Court of Chancery on March 2, 1842, such application would be granted and a resale ordered. It is conceded that there is a difference between the present practice in some of the states and the English practice of that date in regard to the opening of judicial sales. Just what the practice is in many of the states, and whether the American rule or the English rule, so called, is the better, are mooted questions. But these are not here in issue and have no bearing upon this case, for there is no doubt that the English practice governs this case.

In *Blackburn* v. *The Selma R.R. Co.*, 3 Fed. Rep. 689, under a judicial sale certain railroad property and bonds belonging to the defendant had been sold by a special master. Third parties outside the record offered an advance of $500 over $1500 on the railroad property, and $240 over $510 on the bonds. On the strength of the advanced offers, one of the creditors of the railroad, who would be benefited by the increased fund acquired in case of a resale, filed a petition for a resale. No attack was made on the conduct of the sale, the application having been based solely upon the gross in-

* In reply to complainants quotation from opinion of Judge Severens that Equity rule 83. does not apply to masters reports of sales we cite 2. Daniel. Ch. prac. 5th am ed. *p 1305 showing that by practice of English courts of Chancery no distinction in reference to time of confirmation is made between reports of sales and other reports of masters.

adequacy of price and upon the advanced bid. It was held, after a full discussion of the question, that under Gen. Eq. Rule 90, the English practice on March 2, 1842, the date of the adoption of said rule, governed such an application in the United States courts, and that under said practice a re-sale must be ordered. The court, HAMMOND, D.J., said, —

> "In England, before the new practice was adopted, a third person could, upon no other ground than that he offered an advance of price, provided it was a considerable advance, intervene and set the sale aside, he paying all the expenses which the previous purchaser had incurred, and the property was put up for sale upon the advance price. There was no rule as to the amount of the advance required, and no one had any right to open the biddings, since it was always in the discretion of the court to grant the application or refuse it. 1 Sug. Vend. (8th Am. ed.) 163; 2 Daniels Ch. Pr. (5th Am. ed.) 1286; *Barlowe* v. *Osborne*, 6 H. of L. Cas. 555, 559; *Garstone* v. *Edwards*, 1 Sim. & Stu. 20; *Brookfield* v. *Bradley*, ib. 23; *Watson* v. *Birch*, 2 Ves. 51, (s.c.) 4 Bro. C. R. 178; *Upton* v. *Lord Ferrers*, 4 Ves. 700; *Andrews* v. *Emmerson*, 7 Ves. 420; *Morice* v. *Bishop of Durham*, 11 Ves. 57; *White* v. *Wilson*, 14 Bro. C. R. 151; *Farlow* v. *Weildon*, 4 Madd. 460; *Williams* v. *Attenborough*, 1 Tur. & Russ. 70; *Anon.*, 1 Ves. 453.

These authorities abundantly establish that an advance of price as great as that offered in this case always sufficed to set the sale aside and order a resale, no matter how fairly conducted it had been.

In addition to the cases cited by HAMMOND, D.J., *supra*,

the English authorities are numerous and conclusive in support of the contention of the appellant.

In *Barlowe* v. *Osborne et als.*, 6 H. of L. Cas. 555, which was an appeal from a decree opening a sale upon an increased bid, the Lord Chancellor said (page 566), —

> "In the case of estates which are put up for sale in the ordinary mode by auction, by direction of the court of chancery, until there has been a final order (whatever that final order) establishing a particular person to be the purchaser, a third person may, generally speaking, intervene; and, upon no other ground than that he offers an advance of price, provided it be a considerable advance, the sale may be set aside, and he, paying all the expenses which the previous purchaser has incurred, gets an order that the estate shall be put up for sale upon his advanced price."

In *Lefroy* v. *Lefroy*, 2 Russ. 606, an advance of £500 upon the sum of £12,100 was held sufficient to open a sale, even though the applicant was present at the sale. The Lord Chancellor said, —

> "If the court declines to open the biddings, its refusal is not for the sake of the first purchaser; if the biddings are opened, it is not for the sake of the party making the application that a resale is ordered. What the court looks to is the benefit of the parties interested in the produce of the sale and the additional sum which is offered beyond the price already obtained."

In *Power* v. *Power*, 3 Ir. Eq. 511, a motion was made on behalf of a third party to open a sale by an advance of £250 over a bid of £6500. The sale had not been confirmed absolutely. The court said, —

"This court always looks substantially to that which is for the benefit of the parties in the cause, and to the circumstances of the particular case before it; for it is not upon every light occasion that we will set aside a purchase at the instance of a party who chooses to bid a small sum on addition. Such a practice would be well calculated to dampen the bidding, and to injure sales under the decrees of the court; and would, in fact, render the officer's declaration of the highest bidder a mere matter of form. But what the court looks to is to ascertain what is due to the party bidding, and what is due to the creditors. And we will not refuse a substantial sum if accepting it be for the benefit of the creditors. As the motion is opposed by all the parties, plaintiff, defendant, creditors, and purchaser, I have no hesitation in saying that justice would not be done to them if the sale were opened upon the terms offered."

Counsel for the applicant then offered an advance of £500 and the court ordered the sale to be opened.

In *Gorman* v. *Brown*, Sau. & Scul. Ir. R. 154, a sale was opened on an advance of £250 upon the sum of £8500 by a person who was present and had bid at the former sale.

In *Biggs* v. *Rowe*, ib. 152, in which the facts and circumstances were similar to *Gorman* v. *Brown*, *ubi supra*, an advance of £300 upon a bid of £5050 was held sufficient to open the sale.

In *Langford* v. *Carroll*, ib. 155, an advance of £400 upon £6200 was held sufficient to open the sale.

In *M'Clintock* v. *Knox*, ib. 155, an advance of £1000 upon a sum of £33,000 was held sufficient to open the sale.

In *Maloney* v. *Bernard*, ib. 156, an advance of £300

upon a sum of £5550 bid at a sale which had already once been opened, was held sufficient to open the sale after a confirmation *nisi*.

In *Anonynous Case*, 1 Ves. 453, which was a motion to open a bidding of £5020 upon the ground of mistake as to the time of sale, the Lord Chancellor (THURLOW) said he would not open it for a less overbidding than £500.

V.

EVEN IF THE SALE HAD BEEN CONFIRMED PRIOR TO THE FILING OF THE MARCUS PETITION, THE ACTION OF THE COURT AT THE SAME TERM IN ENTERTAINING THE PETITION AND IN DIRECTING ORDER OF NOTICE TO ISSUE THEREON SUSPENDED THE OPERATION OF THE ORDER OF CONFIRMATION.

In *Brockett* v. *Brockett*, 2 How. 238, a petition to reopen a final decree was filed during the term in which the decree was made. The motion being overruled, an appeal was taken, which was opposed on the ground that the decree should be as of the date when first made, and that the appeal was unseasonable.

The court, STORY, J., said, —

> "But the short and conclusive answer to this objection is, that the final decree of the 18th of May was suspended by the subsequent action of the court [in entertaining the petition to reopen], and it did not take effect until the 9th of June [when the petition was dismissed]."

In *Railroad Company* v. *Bradleys*, 7 Wall. 575, which was a motion to dismiss and for a supersedeas, it was set up in defence to the motion for supersedeas that the appeal was not filed and approved within ten days after the decree.

The court, CHASE, C.J., said, —

"The decree was entered on the 6th of February, 1889. A petition for the suspension of the order of dissolution was filed by the secretary of the complainant on the same day; a motion to the same effect was made in behalf of the Department of War on the 11th of February, and a petition to open the decree was filed on the 13th of February by one of the stockholders of the company.

"We do not think it necessary to consider the effect of either of these proceedings; for on the 6th of March, and, as we understand, during the term at which the decree was rendered, a motion to rescind was made in behalf of the complainants, and was heard and decided.

"There is no doubt that, during the term, the decree was at all times subject to be rescinded or modified upon motion, and could not therefore be regarded as absolutely final until the end of the term. It became final in this case when the motion to rescind had been heard and denied."

The decision of *Sage* v. *Central R.R.*, 93 U.S. 412, is not adverse to the appellant on this point, because his motion could be made without leave of court, and was entertained.

VI.

BUT EVEN IF THE SALE HAD BEEN REGULARLY CONFIRMED AND THE DECREE OF CONFIRMATION HAD BECOME OF FULL EFFECT, IN VIEW OF THE FACT THAT THE COMPLAINANTS IN THE CASE WERE THE PURCHASERS, AND IN VIEW OF THE GREATLY INCREASED BID OFFERED BY THIS APPELLANT, THE SALE SHOULD HAVE BEEN OPENED.

The reason for ordering a new sale is to increase the fund

to be realized for those interested in the fund, viz., the creditors and stockholders of the Pewabic Company. Although Mason and Smith are stockholders, yet it is clear that they are no longer representatives of the interests of the stockholders, but that they are simply purchasers trying to get the property at the lowest price possible. But the court has undertaken in this case to protect all the stockholders. To do this it should order a resale even though the sale has been confirmed. The precedents for so doing are numerous.

The Supreme Court of the District of Columbia has passed upon the point here in issue, as appears in the case of *Butterfield* v. *Usher*, 91 U.S. 246, which was an appeal from an order of the Supreme Court of the District of Columbia granting, after confirmation, a resale of property sold under an order of court. In that case the decree of sale was made on the 7th of June, 1872. The sale took place on the 30th of September, and it was reported to the court October 16. On the 15th of November an order of confirmation was entered unless cause to the contrary be shown. On the 12th of December, Butterfield, who was the purchaser, paid the amount of his bond to the trustee who made the sale, and received from him a deed of the property. Previous to this time there had been no order of court directing a conveyance, but on that day the trustee reported to the court; and thereupon an order was entered ratifying and confirming the sale and approving the deed.

On the 14th of December and during the same term of the court, the order of December 12 was set aside on the petition of Usher, the defendant in the suit in which the decree of sale was made, and leave granted to him until December 21 to show cause against the confirmation. He appeared and made his showing, but on the 25th of January an order of confirmation was again entered. From this order Usher

appealed to the general term, and the following decree was entered: —

> "Upon the offer of the defendant making an advance on the sale heretofore made, it is ordered, adjudged, and decreed by the court, this seventh day of June A.D. 1873, that the sale heretofore made in this case by Francis Miller, Esq., trustee, be, and the same is hereby, vacated and set aside. And it is further ordered that the said trustee may proceed to advertise and resell the property, and that the expenses of the cause heretofore incurred may be paid out of the proceeds to be realized from the sale hereby directed to be made. And it is further ordered that the money in the hands of the trustee be paid back to the purchaser, with interest thereon at the rate of ten per cent per annum, to be paid by the defendant Usher, and to be deducted by the trustee from the proceeds to come into his hands from the further sale hereby ordered. And it is further ordered that the trustee, in reselling the property, put up the same at a price not lower than the sum realized at the former sale, together with the sum of five hundred dollars advance offered by George W. Hauptman."

From this decree Butterfield took his appeal, which was dismissed by this court on the ground that the order granting the resale was not a final order.

In *O'Connor* v. *Richards*, Sau. & Scul. 246, which was an application on behalf of a defendant to open a sale to the plaintiff after confirmation, upon the defendant's undertaking to procure a *bona fide* advance of ten per cent upon £1500, it was held that the sale should be reopened, the ground therefor being the fact that the plaintiff was the purchaser.

The jurisdiction of the court was expressly assailed in this case, but it was decided that the court had jurisdiction to set aside the sale after confirmation, *Ryder* v. *Gower*, 6 Bro. Par. Cas. 306, being cited as authority. The Master of the Rolls said (p. 258), —

> "In all cases in which the court refused to open the biddings [after confirmation], the purchaser was a person unconnected with the estate sold, who came into the office merely as purchaser, and was declared the best bidder; but even as against such purchaser the biddings will be opened under special circumstances. The case before me differs, in my opinion, very essentially from that of a purchaser unconnected with the estate. The plaintiff in the case is himself the purchaser. I do not say that the plaintiff may not become the purchaser; at sales before the master it has been the practice to permit him to do so, although perhaps if the matter were to be discussed as a new question, the propriety of the rule might be questioned."

In *Ryder* v. *Gower*, 6 Bro. Par. Cas. 306, a judicial sale was opened after confirmation by an advance of £2000 upon £28,500, where the person making the advance had been misinformed by his agent as to the value of the property. This was the second sale of the property in question, the first having been opened by an advance of £800 upon the sum of £27,500.

VII.

The petitioner Marcus has not been guilty of laches which should defeat the granting of his petition.

The petitioner's first information of the proposed sale was January 24. His first petition was sworn to February 26,

and filed March 3. His second petition was filed March 10. He was advised and had a right to assume that no confirmation of the sale could be made before April 6. Considering the difficulty which he naturally encountered in securing the necessary backing for so large an enterprise, the remoteness of the property, the distance from his own residence and that of his counsel to the court, and the amount of information as to the record of the case which it was necessary to obtain, the appellant respectfully submits that he showed proper diligence in bringing his advanced bid and his objection to the sale to the attention of the court.

VIII.

THE QUINCY MINING COMPANY ARE NOT INNOCENT PURCHASERS FOR VALUE WITHOUT NOTICE, BUT TOOK THEIR CONVEYANCE WITH KNOWLEDGE OF ALL THE INFIRMITIES IN THEIR TITLE.

On March 25, shortly after the order of notice issued upon the petition of this appellant had been served upon them, Messrs. Mason and Smith obtained from the special master at Houghton, Michigan, a deed of the property, and on the same day they in New York conveyed the same to the Quincy Mining Company (Rec. pp. 112–126, inc.). The court had given no instructions to the special master to deliver the deed, and this act of the special master has not been passed upon by the court.

The circular issued by the Quincy Mining Company (Rec. p. 111) is conclusive to the point that Mason and Smith were acting in the interest of that company, so that the knowledge of Mason and Smith is to be imputed to the company.

United States Bank v. *State Bank*, 96 U.S. 30.
Rogers v. *Palmer*, 102 U.S. 263.
State Bank v. *United States*, 114 U.S. 401, 409.
Atlantic Bank v. *Merchant's Bank*, 10 Gray, 532.
Atlantic Mills v. *Indian Orchard Mills*, 147 Mass. 268.

The deed from Mason and Smith recites the decree of sale and the action taken under the same, following in terms the deed from the special master to Mason and Smith.

ROBERT M. MORSE,
J. LEWIS STACKPOLE,
RUSSELL O. OSTRANDER,
CHARLES E. HELLIER,
of Counsel.

MAR 18 1892
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

THE PEWABIC MINING COMPANY, Appellant,

vs.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN SALLOU, Appellees.

(Two Appeals.)
No. 1349.

ALFRED A. MARCUS, Appellant,

vs.

THE SAME.

(Two Appeals.)
No. 1418.

BRIEF FOR APPELLEES.

THOMAS B. DUNSTAN,
ALFRED RUSSELL,
DON M. DICKINSON,
Of Counsel for Appellees.

Press of McGILL & WALLACE, 1107 E Street Northwest.

Supreme Court of the United States.

THE PEWABIC MINING COMPANY, *Appellant*,

vs.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, *Appellees.*

(Two Appeals.) No. 1340.

ALFRED A. MARCUS, *Appellant*,

vs.

THE SAME.

(Two Appeals.) No. 1416.

BRIEF FOR APPELLEES.

Deferring the questions of law, which in our view control these appeals against the appellants, we present a brief and necessary history of the litigation as throwing a strong light upon their position and their alleged equities.

The Pewabic Mining Company was a Michican corporation whose corporate life expired April 4, 1883. The statutory period of three years in addition, as a time within which it might sue and be sued and wind up its affairs, also expired more than four years before this ap-

peal. (Atty. Gen. *v.* Perkins, 73 Mich, 303; Mason *v.* Pewabic, 133 U. S., 50.)

The original controversy decided by this court (133 U.S., 50) was commenced by a bill to restrain the completion of and to set aside a sale of the assets of the defunct company made by the hold-over directors of that company (who were made co-defendants) to themselves for the sum of $50,000.

The defendants in that case steadily and persistently contended from beginning to end, in the allegations of their answer, and in their proofs, that their sale so made should not be interfered with, and should be affirmed on the ground that it was a fair sale, and that the assets were not worth more than $50,000, or thereabouts, and by no estimate $100,000.

Paragraph XI of the bill, found on page 9 of the printed record in the cause (as before this court in 133 U. S., 50), is as follows:

"Your orators further show that, while they have been unable to obtain any detailed description of the realty of said company and its other property, yet they charge and aver that the same is of very great value, and would, at public sale, bring at the very lowest over $100,000; and they aver, on information and belief, that the same is worth in excess of that amount; and yet, without and in the absence of such accurate information, your orators hereby offer for the said property $75,000 in cash for the assets of said company which are proposed to be sold for the sum of $50,000, as provided in said resolution of the meeting of March 26, 1884; and they agree and promise to hold themselves ready to bid that amount at any sale ordered by the court, and tender herewith security that they will do so."

Paragraph 11 of answer, found on page 31 of said last-named printed record:

"These defendants further answering say that they

are not aware of any inability upon the part of the complainants to obtain any detailed description of the realty of said company and of its other property. * * * That they admit that the same is of considerable value, but, estimated at the market price of the stock of said company at the time of the annual meeting, the same was of about the value of $50,000; that they are wholly unable to say what sum it will bring, if anything, if offered at public sale." * * *

Their testimony all sustained this allegation of their answer, not only by elaborate proof of the stock valuation, but also by a large body of proof as to the intrinsic value of the mining property itself, and by extended demonstrations by experts and mining men, through explorations with diamond drills and otherwise, that the copper in the mine had been exhausted, and that the chance of a new find of copper from the property was a matter of mere speculation.

The testimony of the leading representative of the adverse interests, Samuel L. Smith, found on page 432 of that record, is representative of the tendency of all their proofs upon the issue in that case.

"Q. What was the value of the Pewabic property "on the 5th of March, 1884?

"A. I should say from $70,000 to $80,000.

"Q. Over and above the indebtedness?

"A. No, including its indebtedness."

It appears, too, by that record, that the Pewabic property lay between and contiguous to the large producing copper mines, the Quincy and the Franklin, and that the managing directors and officers of the Franklin were the individuals of the hold-over management of the Pewabic; and that to these representatives of the Franklin, made up into a new corporation, the enjoined sale at $50,000 had been made.

After the appeal of the original case to this court, these persons procured an amendment of the Michigan law, and attempted to accomplish the result which had been enjoined in the Federal jurisdiction under that amended law. They were defeated. (*Attorney General* v. *Perkins*, *73 Michigan, 303.*)

The original injunction bill was filed March 31, 1884, and the sale was restrained by Judge Withey, who ordered a reference to a special master to ascertain the value of the property. The master reported the value to be $498,000 (old record, pp. 819, 820). Later, on the merits, Mr. Justice Matthews, sitting at circuit, sustained the position of the minority stockholders, who had filed the bill, holding that on the dissolution of such a corporation the stockholders were entitled to have the matters of the corporation wound up as soon as might be, by a public sale to the highest bidder. (*Mason* v. *Pewabic Co.*, *25 Fed. R., 882.*

Inasmuch, however, as at the argument, counsel for the old board were still contending that the property might not sell for the sum of $50,000 and the debts, (and they then contended, though not in proof, that under the enjoined sale the proposed vendee was to have paid the debts), and claimed that the offer of complainants in the bill—$75,000—would not cover the price they had fixed, $50,000, and the debts—$75,000, Mr. Justice Matthews provided in his decree of sale that if no more than their price, $50,000, and the debts were bid at the sale, then that the enjoined transfer might be carried out. Of his own motion (overruling the contesting nominations of the parties) the justice appointed as special master Hon. Peter White, one of the most responsible citizens in the State, and probably the leading man in mining enterprises in Northern Michigan.

The decree committed the sale of the property solely

to that master, giving him substantially the power of a receiver over the property and the books to facilitate his preparation for the sale. And it further directed him to ascertain what the debts were by an examination of the testimony already taken in the original cause, conferring permission also to order hearings upon that investigation. This decree, as to the sale, was in all respects affirmed by this court, and was re-entered under the mandate on May 6, 1890. (This record, p. 6.)

This business of the sale, and of expedition of the sale, was made a distinct and separate duty of the master, and the provision as to the ascertainment of the debts, it was entirely apparent, was solely for the purpose of fixing the amount which the old board, by the utmost stretch of their contention in argument, whatever the proofs, had claimed would be realized by *cestuis que trust*, stockholders and creditors, if their sale were not interfered with. It is perfectly clear, too, that this investigation by the master was to have to do only with the debts as they existed at the time of the dissolution, or at farthest, at the time of the enjoined sale, and that this branch of his duty, *i. e.*, preparing for the sale and fixing the up-shot price or point from which the bidding should start, was *not* for the purpose of ascertaining who were the proper distributees, either creditors or stockholders.

This is plain because stockholders are not embraced in the order of ascertainment; the master was not directed to invite creditors in, and, under these proceedings of the master, no creditor could be bound as to the amount or validity of his debt by any conclusion of the master under this duty assigned to him by the decree.

The ascertainment of who were the proper distributees was a matter for subsequent inquiry after sale and after a fund should be realized for distribution. For greater certainty I quote from the decree upon this subject (page 7 of record, sections 1 to 4 inclusive):

"1. That the equity of the cause is with the complainants, and that the affairs of the Pewabic Mining Company be, and they are hereby, decreed to be wound up.

"2. That all the assets and property of the said Pewabic Mining Company be sold at public vendue for cash to the highest bidder: *Provided, however*, That if at such sale the bid for the aggregate of the property and assets of said company should not be in excess of fifty thousand dollars above the amount of the debts of said company existing at the time of the sale hereinafter decreed, then that the arrangement for the sale of the property of said company made at the stockholders' meeting in Boston on the 26th day of March, A. D. 1884, and as set up in defendants' answer, shall be carried out under the direction of the special master hereinafter designated, as provided by the resolution adopted by the stockholders of said company at said meeting, and that in such case said master, from the fund to be furnished by the defendants, shall first pay the debts of said Pewabic Mining Company; and, second, shall pay their *pro rata* to such stockholders who shall elect to take their share in cash of fifty thousand dollars: *Provided*, That such stockholders shall make such election and present their stock for cancellation within sixty days from the date of holding the public sale; and provided further, that said special master shall, *in* said *said* stockholders' arrangements of March 26, 1884, shall be carried out as herein provided, execute all necessary formal conveyances necessary to carry out said arrangements on payment into his hands by defendants of sufficient money to pay said debts and the *pro rata* to all stockholders aforesaid, or on payment by them of all the debts and of such stock as shall be presented for cancellation and payment as aforesaid within sixty days with funds furnished by defendants as aforesaid.

"3. It is further ordered, adjudged, and decreed that this cause be, and is hereby, referred to Peter White, as special master, *for the purposes of the sale hereinbefore ordered and with the powers hereinafter stated;* that said master proceed to ascertain the assets and property and the amount of the debts of the said Pewabic Mining Company, and that to this end he may consider the evidence already taken in the cause, and may further, upon notice

to the solicitors of the respective parties, set days for hearing for those purposes, and either party may produce witnesses as in the ordinary course of a master's proceedings, he to report to this court his proceedings and findings thereon.

"That said master is hereby invested with the power and authority to take and examine all the books of the said company and to freely examine all its assets, both real and personal; to enter into and upon the mine and all other property and assets of said Pewabic Mining Company at any and all times as he may desire, and to do those things which in his judgment may be necessary and proper to put all the said property in the condition and situation to sell to the best advantage.

"And it is expressly provided that any proposed purchaser or proposed bidder shall be permitted to enter freely into and upon said mine and all other property, and to fully inspect the same and said assets.

"That, after ascertaining the assets and debts of said company and making a report thereof to this court, as hereinabove provided, and the confirmation thereof, said master shall proceed to sell said property at public vendue, to the highest bidder, in one body, after giving the notice of said sale required by law and the practice of the court, and that he make report thereof, and that said property be offered for sale at the front door of the court house, in the village of Houghton and State of Michigan.

"4. It is further ordered, adjudged, and decreed that the said master, in case of the sale as hereinbefore provided, is invested with full power to make all necessary formal transfers and conveyances."

Nevertheless, after the entry of the decree under the mandate from this court, the proceedings to reach a sale were delayed by the appearance of the Pewabic Mining Company—the defunct corporation—by attorney, at the first hearing set by the special master, who insisted upon a full accounting with the surviving directors at this stage of the case; and as a like necessary incident to the preparation for the sale, an accounting and settlement

with every possible creditor through an advertisement to bring them in, and they induced the learned District Judge to order the special master to enter into these special hearings. (Record, pages 12–14).

Of course, all the defendants who were asked to account on this application of the Pewabic Mining Company, were the persons who represented that company and themselves were all there was of the defense throughout the contest, and the object was plainly for delay.

Then under that order of the court below there were presented before the master no debts that were not shown by the books of the company, but a lot of claims for counsel fees and the defendant's personal services in these litigations, all arising since the filing of the bill, and all for services performed at the instance of the old board; but on the presentation of said claims, the Pewabic Mining Company raised a contest before the master on each; and a claim was also presented by the Franklin Mining Company, managed by the same men, as we have seen, and a like objection and contest raised upon it. (See pages 18 to 24 of this record. See the contested claims listed in the master's report on page 35.)

As will be seen by the report, each one of these persons who had figured as a representative of and co-defendant with the Pewabic Mining Company, throughout the litigation, proceeded to enter into a long contest with the Pewabic Mining Company as to the validity of his claim before a sale could be had. (See master's report, page 35.)

It seems to us unnecessary to make the comment, that it could not have been contemplated by this decree that all other distributees of this trust fund were to await the result of a plenary litigation as to every claim presented by any one, including the result of an appeal to this court by any or all of the claimants, or by any one in interest contesting such claims, before a sale could be held or a fund realized for distribution.

After the summer had passed the special master succeeded in getting a report through all these difficulties on September 18, 1890. (See his report on p. 24.)

The master found that all the debts which existed at the time of the commencement of the suit had been paid from the live assets. That the total claims of all kinds against the Pewabic Mining Company, valid or not, added to $50,000, made an amount far less than the bid which had been offered by a large majority of the stockholders and was secured (fol. 56), to be made at the sale by a deposit of 21,000 shares of the stock in the master's hands (fol. 56). He finds also that the time for the sale of the property was the most auspicious there had been for years; that the fact that the property was to be put up for sale was widely known in Boston, New York, and Michigan, and that the demand for copper and copper lands and the current prices were unprecedented. He recommends an immediate sale for those reasons (fol. 47—end 51–57), and because the property is deteriorating rapidly and is being cared for at a great expense (fol. 56); he advertised the property for sale on a six weeks' advertisement in Detroit, Northern Michigan, New York, Boston, and Chicago, for October 30, 1890. (See fol. 62.)

It is undisputed that at this time and at the time of the proposed sale, the master's report was correct in this, that the activity of copper lands and of the copper product, and the high prices for the latter, were exceptional in the history of the business. This is important as bearing upon the good faith of the later contention of these appellees, that they sought postponement in order to save the property from sacrifice on a low market.

But all the defendants and the Pewabic Mining Company moved to strike this report of the special master from the files, and instituted a mass of other dilatory applications (pp. 37 to 41), now, importing into the record

objections in behalf of the various directors and attorneys of the defunct company as *individual eldimants and creditors* resisting sale; (p. 40).

The court, on October 25, 1890, sustained the master's report as to the amount of debts and assets, but ordered the sale to be postponed from October 30, 1890, "until December 29th" on their application (pp. 41–42), and fixed the upshot price for the bids at the amount of the debts, whether paid or not, as they existed at the date of the commencement of the suit, plus $50,000, the complainants then undertaking in open court to bid at least $250,000 (p. 43).

As the sale approached for December 20th, all the parties engaged on the other side appeared and presented their second application for a postponement and attacked the special master for not proceeding to a hearing upon the various contested claims above mentioned (pp. 43 to 60).

As to the good faith of the applications for hearings before the special master, we will refer the court to the history of the conduct of these appellants, set out in the special report of the special master to the learned District Judge, and called for by him at page 61.

The petitions requiring the special master to pass on the various claims prior to a sale were promptly denied by the District Judge (p. 64), but the District Judge yielded a second postponement of the sale ordering the master to adjourn it until January 24th, 1891 (fol. 93)

The dead men on the Board of Directors appeared as petitioners for this postponement. (Id. and F., 76 and 77.)

The applications were again made for postponement of sale set January 24th (fol. 126 to 140), and upon a showing and hearing of both sides postponement was refused.

Application was then made for a mandamus to this court to compel postponement, which was refused, and

the sale took place; the master's full report of it appearing at page 72 of the record.

The final bid for the property was $710,000, and it was struck off to these complainants, Messrs. Mason and Smith.

The sale had been advertised for sixteen weeks. It was of property and assets which the stockholders were entitled to have sold and speedily sold according to the decision of this court eight years before. Any one interested in the property must have known that the question of its public sale was the sole one being litigated all these years, and that the result of the litigation was an affirmance by this court of a decree of sale. The defunct company had ceased to be a subject of interest to any one save so far as its assets were the subject of sale, and no one could know anything about it or hear anything about it from any one interested, or from the mere reference to current news regarding this property or copper property, or refer to the newspapers on the supject, without being informed of the sale.* Yet, at this time, after every dilatory method had been used by every person who could by any possibility be brought into the record, and after the delays had reached their final limit and the sale was actually taking place, one *Alfred A. Marcus* comes upon the field with this telegram received by the master late in the evening of the day before the sale at Houghton, Mich.:

"(Dated) BOSTON, MASS., *January 23d, 1891.*

"To PETER WHITE, Special Master:

"Please postpone sale of Pewabic Mine; just found out the sale on our Jewish Sabbath; never notified of sale until to-day. We hold nearly three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers, who will not attend sale on

*See as to laches in such circumstances, cases collected in Jamison's (Mich.) Ch., p. 156, and in Ky. Court of Appeals, 1891, 16 S. W., 146.

Saturday. Will most cheerfully pay all expenses for postponement; if not, please announce at sale. We will protest against this legality.

"(Signed:) ALFRED A. MARCUS."

It will be observed that the person was totally unknown to the master (see report, p. 75) and *that he did not claim to be a stockholder*. The master, in the midst of bidders who had travelled thousands of miles in mid-winter to reach the place of sale long postponed, and which the court had directed him to proceed with, paid no attention to the telegram, and on Monday following the Saturday of the sale he received the following dispatch (p. 75, record, *Id.*):

"(Dated) BOSTON, MASS., *January 26th, 1891.*

"To PETER WHITE, Special Master:

"You ignored my dispatch; sold the Pewabic mine. I protest against sale, as you were bound to do all to get the highest price. I claim the right now to bid seven hundred and twenty thousand dollars cash being twenty thousand dollars more than bid at the illegal sale. I shall claim the mine, being the highest bidder, and protest against any transfer being made to any one except myself, and shall hold you personally responsible.

"(Signed) ALFRED MARCUS."

It is to be noted that the list of stockholders is printed in the original record, to which the master is authorized by the decree to refer, and that Alfred A. Marcus does not appear to be a stockholder. It is also worthy of remark that, in all the showing filed on the subsequent motions in this matter, including the affidavits of Demmon and other officers connected with the defunct corporation, there is no showing that Marcus ever was a stockholder except his own statement in his petition. The other statements in his petition are supported by something in the nature of proof. It is apparent that the thought of clothing him with the character of a stockholder is one that had not

occurred to anyone until after the objections to the confirmation of the sale of the Pewabic, urged by the defunct corporation and by all the other defendants (pp. 78, 79) had been fully heard on February 21, 1891, and overruled. (Marcus swears to his first petition on February 26.)

On the filing of the special master's report an order was entered on February 7th, 1891, confirming the sale unless cause to the contrary should be shown within eight days. This order was promptly served on all the attorneys who had appeared in the cause for the defunct company, or for the old board of directors, or for any of them, and upon the attorneys for the alleged creditors who had contested (folio 147–150). They all appeard to contest, filing two separate sets of objections, (not exceptions) according to the proper practice showing cause against the confirmation (pages 78, 79). The same were fully argued by the counsel for all the parties. The order overruling the objections and that the report stand confirmed, is an absolute one and recites the premises, and was duly entered on Monday, March 2, 1891. (See record, p. 81.)

On March 3, 1891, Mr. Marcus filed in the clerk's office a paper which was sworn to in Boston five days after hearing of the aforesaid objections of confirmation, wherein he prays—

"That the said sale of the property of the Pewabic Mining Company, made on January 24, 1891, be declared void and set aside and the special master be ordered to convey to the petitioner, as highest bidder, said property upon his paying, within a reasonable time, the said sum of $721,000" (p. 82).

Nothing whatever was done upon that petition. It was not served or presented to the court.

On March 13, 1891, another petition was filed by Marcus, offering to bid $800,000, and asking that the sale be set aside and the property reoffered. This petition is not

properly attested; there is no date to the oath, nor is there any statement as to what the oath was (p. 84). There was no showing filed with it in support of it before the court issued an order to show cause. Thereafter, on April 22, 1891, the defunct corporation appeared and supplemented the petition of Marcus by its petition based upon that of Marcus praying that the sale be set aside and for a resale (folio 192). On April 27 these petitions came up for hearing, and then were filed various affidavits tending to show that Marcus was an orthodox Jew, and that certain persons who had made an offer to support Marcus in a letter to "R. M. Morse, Esq., counsel, Boston, Mass.," were worth or would pay various sums as part of such offer (p. 96 to 111). In the mean time the standing and character of Marcus had been investigated, and this is what was found from the records of Massachusetts:

Twenty-nine judgments for sums ranging from $50 up to $5,000 were standing against him, on the most of which warrants were out for the arrest of Marcus, and in all of which applications were pending for his arrest. Also that there were pending against him *twenty* undischarged attachments at the suit of different persons (among them Daniel L. Demmon for $10,000) on claims ranging from $100 to $75,000, and that his household furniture was then under attachment and had been in the sheriff's hands, but had been released by the filing of a bond. (Record, p. 127 to 133.) This showing was duly made in this cause and filed.

It appears also that immediately following the confirmation order the deed had been prepared from the master to Mason and Smith, and that it was delivered at the price of the amount of the bid made on March 25, 1891, and that subsequently, March 28, Mason and Smith had conveyed to the Quincy Mining Company at the same price at which it had been conveyed to them, to wit: $710,000. (Record, page 120.)

It does not appear whether the details stated in the circular of the Quincy Mine to its stockholders of February 26 was carried out. Whether it was or not we shall see that it was perfectly competent for Mason & Smith to bid for the Quincy or to buy for the Quincy, and to transfer to the Quincy, for stock or for anything else.

On full hearing and argument, the learned District Judge dismissed the Marcus petition, with costs, and denied the application of the defunct corporation based upon it (pp. 135, 136).

It appears conclusively that since the filing of the bill in this cause by the complainants as the holders of the minority of about 5,000 shares out of the total capitalization of 40,000 shares, there have actively joined the complainants to bring about the sale and the winding up of the corporation, stockholders making a majority, or 21,175 shares. (See master's report, folio 56, and see folios 460 to 462, inclusive.)

It does not appear anywhere that a single stockholder, other then the alleged stockholder, Marcus, has come into this case in support of the defense or in opposition to this sale since the hearing below on the merits in 1884.

It seems to us that the record which the appellees (including Mr. Marcus) have made for themselves, as above condensed, should dispose of these appeals on the merits; but we proceed to consider the technical questions of practice which they raise and the legal positions they take.

Points.

We have elsewhere considered the right of Marcus to appeal at all. He was not a party, he was not a bidder, his claim to be a stockholder is at least diaphanous; as a stockholder he was never a necessary party to the

record, and therefore, he was not entitled to intervene. His application to intervene was denied by the court by the order of April 27, 1891. (Record, p. 135.) He could not appeal from the order of confirmation of March 2, 1891 (Blossom *v.* Milwaukee, 1 Wall., 655, and cases in our motion brief, p. 52), and the order refusing to permit him to intervene and open the biddings is purely discretionary and is not appealable. (8 Am. and Eng. Encyc. of Law, p. 257—cases in note; *Id.*, note 2, p. 260.)

We have seen, too, in the briefs, on the motions to dismiss that the Pewabic Mining Company is not only a dead person, but a person on the estate of whom administration is legally closed. All that remains of it is some unadministered assets, which the Court of Chancery has laid hold of and assumed jurisdiction to distribute among the proper distributees. Of these distributees, stockholders, or creditors, no one appeals. There is no Board of Directors, and the character of the old board as trustees, after dissolution, has ceased to exist (see Matthews, J., in 3 F. R., 884—middle).

Furthermore, a majority of the distributees oppose the appeal, and if there remains a semblance of authority in those who were the old board as representatives of the defunct corporation, even that semblance is taken from them by the opposition to their course of a large majority of their principals, the stockholders. It is not claimed that the pretense of an election of a board has been gone through with since 1884, or that there has been any other expression of the stockholders since on any subject or for any purpose.

Furthermore, if this defunct person could appeal it could not do so except by conforming to the practice in connection with the other co-defendants as we have shown. Neither could it or any one take a valid appeal, as we have seen, from the discretionary order refusing to open the bids of April 27, 1891.

The claim that the order of April 27, 1891 (p. 135), was a final confirmatory order has nothing to rest upon. It had to do solely with the Marcus application to intervene, and in no way refers to the order of absolute confirmation of March 2, 1891 (p. 81), or to the preceding *nisi* order of confirmation of February 7, 1891 (p. 77).

No one has contended that the decretal order absolute of March 2, 1891 (record, p. 81), making the confirmation absolute was not an appealable order, if there were any one competent to appeal here. But the Pewabic Mining Company, if it were competent to appeal, could not raise the question as to practice now presented, or the point now made, that Mason & Smith were not competent bidders. That company and its co-defendants appeared to show cause against the *nisi* order, accepted the practice, and presented for cause all the objections which they chose to present, appearing in two sets of objections at pages 77–79. These objections were all argued, submitted, and decided, and among them does not appear either the point on practice nor that going to the competency of Mason & Smith.

So far as the co-defendants (the old managing board) are concerned, they also appeared and argued the same objections, but do not appeal, having formally withdrawn from the appeal by an instrument filed in this cause, appearing at page 266.

But even if appeals would lie, and even were we again at circuit where the questions might properly be discussed, not one of the positions of the appellees is well taken.

These are:

I. THAT THE SALE SHALL BE SET ASIDE AND THE BIDDINGS OPENED ON THEIR ALLEGED OFFER TO PAY AN INCREASED PRICE.

As will be seen by the authorities, even under the obsolete English practice, the court never opened the biddings *after confirmation*, even where the bid accepted appeared to be inadequate and the new offer was double or treble the accepted bid. It was only by establishing a clear case of fraud in the sale that a confirmation order could be vacated.

And under the more modern English practice afterwards established by statute (2 Daniels Ch. Pr., 5th ed., 1286, note 7), the practice of opening the biddings upon a substantial advance in price, even *before confirmation*, was strongly disapproved by the highest authority.

The reasoning of the courts, English and American, is that there should be the same (and greater) stability in sales by the courts as in sales by private parties; that the public must be made to feel secure, that when a court orders a sale that bidders may expect to have a finality, if they buy, when their own conduct is untainted by actual fraud; that the experience of men has taught that wherever there is a contest for property between parties, or a competition at a sale; or even when any one buys without contest or competition, that the mere fact that the thing offered is sold causes its value to rise and causes it to be coveted by every one else; all want what a purchaser has shown sufficient confidence in paying a good price for; and so it is said that the mere fact that any one else who did bid or who did not bid, wants the property at any higher price is no reason for changing the solemn act of sale, under judicial order, offering property to the highest bidder.

Said *Lord Eldon, 1 Ves. Jr., p. 57*, "the only cases in "which bids should be reopened are when there was some "fraud or misconduct in the purchaser, or fraudulent neg- "ligence in another person of which it would be against "conscience that the purchaser should take advantage."

In White v. *Wilson, 14 Ves., p. 51*, the same learned "judge said, "that great strictness should be observed in "opening biddings before confirmation, and you could not "do a more mischievous thing than to relax from the "binding nature of contracts in the master's office."

See to same effect in *Barlow* v. *Osborne, 6 H. of L., cases p. 556.*

Chancellor Kent said in the case of *Williamson* v. *Dale, 3 Johns. Ch.*, 290: "I do not lay any stress upon alleged "inadequacy of price on opening biddings; such a "ground unattended with other circumstances, like "fraud, is not sufficient."

In Tripp v. Cook, 26 Wendell, pp. 123–156, the court quotes *Lord Eldon*, and comments as follows: "It is a wise rule of general expediency, especially under our system of sales at auction, that the Court of Chancery, as the common guardian of all the parties in each case, and at the same time of all similar interests, present and future, should consider every fair sale as final."

8 Am. and Eng. Encyc. of Law, p. 260, N. 3., Am. Cases, and *Id.*, 261, N. 1. The practice never obtained even in England *after confirmation*. 2 Daniels, (Ch., 5th ed.) 1285–1287, and 1288 bottom.

The practice of opening biddings before confirmation merely on an offer of an advanced price has never obtained any standing in this country. (See cases collected in Note 1, 8th Am. and Eng. Ency. of Law, p. 261; 2

Daniels Ch. Pr., 5th Ed. 1286, Note 7, and 1289; Campbell *v.* Gardner, 3 Stoct., 425.) It is never done in Michigan except for fraud (Burtch *v.* Hogge, Har. Ch., 31; Bullord *v.* Greene, 10 Mich, 268; Gilbert *v.* Haire, 43 Mich., 283).

But an examination of the English and American doctrine on this subject, with our own conclusions in favor of the appellees, is unnecessary. Mr. Justice Bradley, in delivering the opinion of this court in Graffon *v.* Burgess, 117 U. S., p. 191, said:

"It was formerly the rule in England in chancery "sales that until confirmation of the master's report the "bidding would be opened upon a mere offer to advance "the price *ten per centum* (2 Daniell's Ch. Pr., 1st ed., "924; 2d ed. by Perkins, 1465, 1467; Sugden on Vendors "and Purchasers, 14th Eng. ed., 114). But Lord Eldon "expressed much dissatisfaction with this practice of "opening biddings upon a mere offer of an advanced "price, as tending to diminish confidence in such sales, "to keep bidders from attending and to diminish the "amount realized (White *v.* Wilson, 14 Ves., 151; Wil- "liams *v.* Attenborough, Turner & Russell, 75; White *v.* "Damon, 7 Ves., 30, 34). Lord Eldon's views were "finally adopted in England in The Sale of land by Auc- "tion Act, 1867, 30 and 31 Vict., C. 48, sec. 7, so that now "the highest bidder at a sale by auction of land under "an order of the court, *provided he has bid a sum equal to, "or higher than, the reserved price (if any)*, will be declared "and allowed the purchaser, unless the court or judge, "on the ground of fraud or improper conduct in the "management of the sale upon the application of any "person interested in the land, either opens the biddings "or orders the property to be resold. (1 Sugden on "Vendors and Purchasers, 14th ed., by Perkins, 114, "note *a'*).

"In this country Lord Eldon's views were adopted at "an early day by the courts, and the rule has become "almost universal, that a sale will not be set aside for "inadequacy of price unless the inadequacy be so great "as to shock the conscience, or unless there be addi-

"tional circumstances against its fairness, *being very much* "*the rule that always prevailed in England as to setting aside* "*sales after the master's report had been confirmed.* Living- "ston *v.* Byrne, 11 Johns., 555, 556, (1814); Williamson "*v.* Dale, 3 Johns. Ch., 290, 292, (1818); Howell *v.* Baker, "4 Johns. Ch., 118, (1819); Tiernan *v.* Wilson, 6 Johns. "Ch., 411, (1822); Duncan *v.* Dodd, 2 Paige, 99, (1830); "Collier *v.* Whipple, 13 Wend., 224, 226, (1834); Tripp "*v.* Cook, 26 Wend., 143; Leferre *v.* Laraway, 22 Barb., "167, 173; Seaman *v.* Riggins, 1 Green's Ch. (2 N. J. Eq.) "214; Eberhardt *v.* Gilchrist, 3 Stockt. (11 N. J. Eq.), 167; "Campbell *v.* Gardner, 3 Stockt. (11 N. J. Eq.), 423; Mar- "latt *v.* Warwick, 3 C. E. Green (18 N. J. Eq.), 108; Kleop- "ping *v.* Stellmacker, 9 C. E. Green, (21 N. J. Eq.), 328; "Wetzler *v.* Schaumann, 9 C. E. Green (24 N. J. Eq.), 60; "Carson's Sales, 6 Watts., 140; Surget *v.* Byers, Hempst., "715; Byers *v.* Surget, 19 How., 303; Andrews *v.* Scoton, "2 Bland, 629; Glenn *v.* Clapp, 11 G. & J., 1; House *v.* "Walker, 4 Maryland Ch., 62; Young *v.* Teague, 1 Bailey "Eq., 13, 14; White *v.* Floyd, Speer's Eq., 351; Hart *v.* "Bleeght, 3 T. B. Mon., 273; Reed *v.* Carter, 1 Blackford, "410; Pierce *v.* Kneeland, 7 Wise., 224; Montague *v.* "Dawes, 14 Allen, 369; Drinan *v.* Nicholas, 115 Mass., 353.

"From the cases here cited we may draw the general "conclusion that, if the inadequacy of the price is so gross "as to shock the conscience, or if, *in addition to gross inade-* "*quacy* the purchaser has been guilty of any unfairness, "or has taken any undue advantage, or if the owner of "the property or party interested in it has been for any "other reason misled or surprised, then the sale will be "regarded as fraudulent or void, or the party injured will "be permitted to redeem the property sold. *Great inade-* "*quacy* requires only slight circumstances of unfairness "in the conduct of the party benefited by the sale to raise "the presumption of fraud."

The opinion then analyzes the authorities and demonstrates from them that it must be a very plain case of fraud or such gross inadequacy of price as to shock the conscience, and thus raise a presumption of fraud, to make a case for opening the biddings even *before confirmation.* Especially is this so where the court in making

the decretal order of sale had named a reserved price as was done by the court below in this case in the decretal order of sale, wherein was fixed the sum of $130,000 as the reserved price. (Record p. 42.)

We bid $580,000—in excess of the reserved bid.

II. The Objections to the Competency of Mason and Smith as Bidders.

This objection and the authorities cited in support of it come from the English Rules of Practice governing chancery sales, where the complainant and his solicitors are made trustees to conduct and direct the sale. It is therefore required that when the complainant himself desires to bid he shall apply to the court, when the court, if it makes an order permitting him to bid, invariably appoints its own officer to conduct the sale. Then either party may bid.

It is undoubtedly true, and never has been disputed, that a trustee to sell like an executor, an assignee in bankruptcy, a receiver, a *special* master, or any one else occupying fiduciary relations, can not directly or indirectly buy the property of the *cestuis que trust* at the trustee's sale.

The authorities of this kind cited by counsel on the other side would be in point, had the special master bid in the property, or caused it to be bid in for *himself*.

Michaud v. *Girod*, 4 How., 503, is a fair representative of the authorities cited by appellant's counsel. In that case the executors (through their agent) had purchased the entire estate of their brother, the decedent. Of course the principle laid down is that no person can unite the two opposed characters of buyer and seller, and the sale was set aside.

But it is equally true that when the court interposes its own officer to conduct the sale in accordance with

specific directions of its decree and decretal orders, that the disability does not apply to the complainants. Nor does it apply on the authorities in such a case when the sale is conducted by the officer of the court, even to a trustee of the person whose property is sold. (Smith *v.* Black, 115 U. S. p. 308. Richards *v.* Holmes, 18 How., p. 143.) and See S.C. Sup. Court (1890) 5 L.R.A. 166

In *Twin Lake Oil Company v. Marbury, 91 U. S., p. 587*, the director of a corporation who loaned money to it had taken security by a deed of trust to another. The property was sold under the deed of trust and the director bought at the sale. After discussing the validity of the director's debt, the court—through Mr. Justice Miller, says:

"If it be conceded that the contract by which the "defendant became the creditor of the company was "valid, we see no principle on which the subsequent pur- "chase under the deed of trust is not equally so. The "defendant was not here both seller and buyer. *A trustee "was interposed who made the sale and who had the usual "powers necessary to see that the sale was fairly conducted, "and who in this respect was the trustee of the corporation, "and must be supposed to have been selected by it for the ex- "ercise of this power.* The defendant was at liberty to bid, "subject to those rules of fairness which I have already "conceded to belong to his peculiar position; for, if he "could not bid, he would have been deprived of the only "means which his contract gave him of making his debt "out of the security on which he had loaned his money."

If the sale is duly advertised and properly conducted, trustees sale at public auction will not be set aside merely because of gross inadequacy of price, though made to a corporation of which the trustee is an officer. Clark *v.* Trust Co., 100 U. S., p. 149; and see as to complainant's right to bid: Allen *v.* Gillett, 127 U. S., p. 596; Mott *v.* Walkley, 3 Edwards Chancery (N. Y., p. 590); Hogsett *v.* Ellis, 17 Mich., p. 363; Ledyard *v.* Phillips, 32 Mich., p. 308.

Under our practice the master, especially a special master, has no principal or authority over him, save the court.

Smith v. Arnold, 5 Mason, p. 420, Judge Story said:

"In sales directed by a court of chancery, the whole "business is transacted by a public officer, under the "guidance and superintendence of the court itself. Even "after the sale is made, it is not final until a report is "made to the court and it is approved and confirmed."

And this court said in *Blossom v. R. R. Co.*, 3 Wall., p. 209:

"The marshal or master, in carrying out a decretal "order, is more than an auctioneer. They have duties "to perform for all concerned, and in the performance "of those duties they may adjourn the sale for good "cause shown. * * *

"The general rule is that the sheriff is not bound to "obey the directions of the attorney of the creditor "to make an unreasonable sale of the property of the "debtor, if he sees that the time selected, or other at- "tending circumstances will be likely to produce great "sacrifice of the property; but he may, in such case, if "he thinks proper, postpone the sale, especially if it ap- "pears that the creditor will not sustain any considera- "ble injury by the delay and no reason is perceived why "the same rule may not be safely applied in judicial "sales made under the decretal order of a court of "chancery * * * at page 208: 'Acting under the "'decree they (masters to sell) have duties to perform to "'the complainant, to the vendor, to the purchaser and "' to the court, and they are bound to exercise their best "'judgment in the performance of all those duties.'"

Even if it were shown that the complainants bid for the Quincy Mining Company with intention to transfer their bid, there is nothing in that which can be the subject of criticism. It had been generally known that the principal bidders for this property would be the two great mining companies on each side of it, the Quincy

and the Franklin. The master's report of September showed this and the appellants have contended from the beginning of the litigation that the Quincy wished to buy; there never has been any denial of it; there never has has been any concealment; it was the interest of all the stockholders that these companies should compete.

Even if there had been a combination between two bidders to share the profits made on the bid, if there were no agreement to dampen the competition of others the sale would not be affected. (See 2d Daniel Ch. Pr., p. 1288, and cases).

Such agreements are only void if intended to prevent competition. (Wilkes *v.* Hoppock, 6 Wall., 99).

See where the creditor secured by a trust deed procured the auctioneer to bid a certain sum for him at the trust sale. (Richards *v.* Holmes 18 How., p. 143)

Transfer of the bid made at the sale is no ground for setting aside sale and ordering a resale. (Culver *v.* McKnew, 43 Mich., 332).

The statement in the master's report that complainants "having been charged by the solicitors for the complainants with the execution of said decretal order," cuts no figure; the report was prepared by the master's local attorney, who took the form of the report from some book on English chancery practice, and did not recite a fact.

The court below on this subject said:

"With regard to the circumstances that these plain-
"tiffs—some of them—had become the purchasers at this
"sale: It may be that it would have been a proper pro-
"ceeding to have obtained from the court an order giv-
"ing them leave to bid at the sale. It was not done.
"But the only object of that practice is to guard against
"fraud. If there are circumstances in the situation
"which would induce the court, in the first instance, to
"apprehend that there might be danger that both par-
"ties would use their position to work fraud upon the
"others, then the court would deny the application. It

* See Hopkins v Ewing (1891) 122 Ny 144
15 How. 494

"would be governed in either granting or disallowing it "by consideration of whether the circumstances were such "as to possibly lead to the perpetration of a fraud if they "were allowed to bid at the sale. And substantially the "same rule would apply when the court came to look "after the matter—to look to the matter from the position "behind it. The court would then look back over the "proceedings and see whether they had used their posi- "tion in such a manner as to work a fraud upon others' "interest.

"It is not suggested, or claimed, upon this argument, "that these stockholders who became purchasers, who are "complainants in the case, have used their position to "defraud the other parties. Now, if there were any alle- "gation of fraud, founded upon any facts which the "court could lay hold of as furnishing a just reason for "thinking that there had been a fraud the court would "scrutinize those facts very closely. But I think their re- "lation to the case is only a circumstance which induces "the court to look into allegations of fraud with jealous "scrutiny; that the rule does not impose an absolute "disability to bid, and, if they have bid, the question re- "mains whether they have used their position in this "sale and have acquired an advantage to themselves by "any contract which is unfair or false to the other par- "ties' interest. There being none in this case, I think "that that circumstance becomes immaterial." (MS.)

III. The Objection that the Master's Sale was Prematurely Confirmed under the Rules of Equity Practice has Nothing to Rest Upon.

General equity rule 83 is a fragment of an entire code regulating proceedings before masters and exceptions thereto, when such proceedings are of a *quasi* judicial character before standing masters, or those performing their duties. That code extends from general equity rule 73 to general rule 83, inclusive.

General rule 83 assumes on its face some precedent hearing before the master at which objections and argu-

ment have been had. It is well settled that no exceptions can be assigned to a master's report unless based on objections taken before the master (Story *v.* Livingston, 13 Pet., p. 359; McMicken *v.* Perin, 18 How., p. 507, and a review of the practice by Wallace, J., in Celluloid *v.* Cellonite, 40 F. R., at p. 76)—a thing utterly incongruous as applied to a master's sale.

That rule has no application to the ministerial act of a master selling under the direct order of the court any more than it has to a sale made by a marshal under such an order, as this sale might have been. In either case, under the practice, a report of the sale and a confirmation would be necessary. But objections to a sale, made either by a marshal or a master, do not come up in the form of exceptions, but in the form of showing cause why it should not be confirmed. There is no such thing as a hearing before a report of sale, and so it is that rule 83 cannot apply.

Old rule 19, of the local Federal Court rules, was abrogated, not because it was in conflict with rule 83, but because it was surplusage. The practice pursued here on the report of sale was uniformly the English practice and has not only the authority of uniform precedents in the federal jurisdiction, but also that of General Equity Rule 90, as follows:

"In all cases where the rules prescribed by this court "or by the Circuit Court do not appply, the practice of the "Circuit Court shall be regulated by the present practice "of the High Court of Chancery in England, so far as the "same may reasonably be applied consistently with the "local circumstances and local convenience of the dis-"trict where the court is held, not as positive rules, but "as furnishing just analogies to regulate the practice."

This (the eight day order *nisi*) is in accordance with

the rules and practice in the State courts of Michigan (Jennison, Ch. Pr., p. 157 and rule 79), and is therefore in accordance with the "local circumstances and local convenience" referred to in General Equity Rule 90. (Blackburn *v.* Selma R. R., 3 F. R., 689.)

The English as well as the American practice is the order *nisi*, and in every respect, that pursued in this case. (2d Daniell, Ch. Pr., 5th ed., pp. 1275, 1281.)

And see cited and approved in the case of Mayhew *v.* West Va. Co., pp. 205, 215, 24 Fed. R. (Waite, C. J.), subsequently affirmed under title of Camden *v.* Mayhew, 129 U. S., p. 73.

The same practice pursued in the following: Mellen *v.* Moline Co., 131 U. S., 352; Dist. of Columbia *v.* McBlair, 124 U. S., pp. 320 (325); 91 U. S., 246, Butterfield *v.* Usher; 96 U. S., 712, Sage *v.* R. R. Co.; Blackburn *v.* Selma R. R. Co., 3d F. R., 689.

And as to the effect of this rule generally adopting the English practice where no other provision is made, see RRADLEY, J., in Thomson *v.* Wooster, 114 U. S., pp. 104 (119–120).

It is uniformly held that equity practice in the Federal courts must be uniform throughout the United States. (Boyle *v.* Zacharie, 6 Pet., p. 648; Payne *v.* Hook, 7 Wall., p. 425.)

As against the letter of the clerk below, we cite the opinion of the learned judge below on this point:

"I gave that matter pretty careful consideration when "the matter was up, and I became satisfied that certainly "after the abrogation of rule 19—the old rule 19—leav- "ing the matter exposed to the operation of the princi- "ples of the rule of the English practice, that such sales "were to be confirmed by orders *nisi* and absolute. Un- "der the English practice they were rules of eight days; "the rule *nisi* was an order of confirmation within eight

"days. I do not think that the eighty-third general "rule was intended to apply to reports of sales by the "master where that is the only thing he reports. If "there are other incidental matters connected with the "reference which the master has been employed about, "other matters which he reports aside from the mere "fact of having made a sale under an order of the court, "the confirmation of the report in those respects could "have followed under the operation of the rule 83—the "general rule. There were probably in those matters "which were referred to the master other matters than "the mere making of a sale, though, perhaps, not any of "those were included in the special report which he "made. There were matters referred to him under a "general reference which would fall under the operation "of rule 83, and I think the mere sale of the property "comes within the scope of the chancery practice in "England of confirmation by orders *nisi* and absolute. "I gave that matter a good deal of attention, and so de-"cided when the case was before me last, and I should "not feel disposed to go into any revision of that decision "now.

"As a matter of precaution, however, I withheld the "order confirming that sale until the next rule day to see "whether the parties would except to the master's report, "and, no one having filed any exceptions, the order of "confirmation was entered on the rule day. I am satis-"fied with the correctness of the holding then made." (MSS.)

The practice pursued by the master was the proper one—to await confirmation and then pass the deed. (2d Daniell, Ch. Pr., 5th ed., 1276, and 8th Am. & Eng. Encyc. of Law and Cases, 256.)

"It is irregular to issue a conveyance until after con-"firmation, but the confirmation passes the title, and then "the deed must be issued." (Id. and High on Rec., 131, and Cases.)

It is contended that the special master should have withheld the deed as soon as Marcus' petition, unsup-

ported by any showing, was placed upon the files. There was no stay of proceedings; the property, as appeared from the master's report, was in great danger and was suffering great damage for want of a custodian or caretaker. He had prepared his deed and demanded his money. The purchasers had gathered to pay on delivery of the deed the large sum of $710,000. The master was unconditionally entitled to his money, and the purchaser was unconditionally entitled to possession and evidence of title—doubly needed in the conditions and in consideration of the value involved. The deed itself was unnecessary to pass title, as that had completely passed by confirmation.

Until confirmation, the highest bidder when the property has been struck off is not a purchaser in effect, but is rather a preferred bidder, whose right to be invested with the title is perfected upon confirmation. (Blossom *v.* R. R. Co., 3 Wall., 196; Ruggles *v.* Centerville Bank, 43 Mich., 192.)

After confirmation, "the sale is precisely upon the "same footing as a sale in those States when an order of "confirmation is not required, but a sheriff's deed has "been passed." (Campbell *v.* Gardner, 3 Stockt., N. J., 423.)

"Losses by fire before confirmation are not the purchaser's loss, but after confirmation they are." (Ex. P. Minor, 11 Ves., 559; Wagner *v.* Cohen, 6 Gill, Md., 102; Elkin *v.* Herbert, 4th Coldw., Tenn., 116; Mutual Ins. Co. *v.* Balch, 4 Abbott, N. C., 200.

And to the point that the order of confirmation itself passes the title and makes the master's act in striking off the property to the purchaser the act of the court, we cite:

Camden *v.* Mayhew, 129 U. S., 80, and cases in brief; 8 Am. and Eng. Encyc. of Law, p. 249, N. 1; Miller *v.*

Sherry, 2 Wall., 237; Freeman on Void Judicial Sales, Ch. 4; Dills *v.* Jaspar, 33 Ill., 262; Woehler *v.* Endter, 46 Wis., 301; Welp *v.* Gunther, 48 Wis., 543; Allen *v.* Elderkin, 62 Wis., 627; Tooley *v.* Gridley, 11 Miss. (3 Smed. and M.) 514; Wells *v.* Rice, 34 Ark., 346; Deaderick *v.* Smith, 6 (18) Hump., (Tenn.), 146; Tooley *v.* Kane, 1 Smed. and Mch. (Miss.), 518–522; Robertson *v.* Haun, Freem., Ch. (Miss.), 270; Penn's Admr. *v.* Tolleson, 20 Ark., 652; Sessions *v.* Peay, 23 Ark., 39–41; Williamson *v.* Berry, 49 U. S. (8 How.), 495–547; Minnesota R. Co. *v.* St. Paul R. Co., 69 U. S. (2 Wall.), 609; Yerby *v.* Hill, 16 Tex. 377–381; Moore *v.* Shultz, 13 Pa. St., 102; Vandaver *v.* Baker, 13 Pa. St., 121–126; Mason *v.* Osgood, 64 N. C., 467; Wagner *v.* Cohen, 6 Gill. (Md.), 97; Iglehart *v.* Arminger, 1 Bland. Ch. (Md.). 527; Andrews *v.* Scotten, 2 Bland Ch. (Md.), 538; Sewell *v.* Costigan, 1 Md.Ch., Dec. 208; Harrison *v.* Harrison, 1 Md.Ch., Dec. 331; Hurt *v.*Stull, 4 Md. Ch. Dec., 391; Forman *v.* Hunt, 3 Dana (Ky.), 614–621; Ayers *v.* Baumgarten, 15 Ill. 444; Penn *v.* Heisey, 19 Ill., 297; Bozza *v.* Rowe, 30 Ill., 198; Southern Bank *v.* Humphreys, 47 Ill., 227; Thorn *v.* Ingran, 25 Ark., 52; Hay's Appeal, 51 Pa. St., 58; Gowan *v.* Jones, 18 Miss. (10 Smed. and M.), 164; Allen *v.* Poole, 54 Miss. 323; Busey *v.* Hardin, 2 B. Mon. (Ky.) 407; Young *v.* Keogh, 11 Ill., 642; Mills *v.* Ralston, 10 Kan., 206.

After confirmation and rights of a third party have accrued a sale can not be attacked save by an original suit. (Crawford *v.* Fuller, 35 Mich., 57; Berry *v.* Innes, *Id.*, 189; Lawrence *v.* Jarvis, 36 *Id.*, 281; Jewett *v.* Morris, 41 *Id.*, 689.)

The Quincy Mining Company is a vendee of the purchaser under a confirmed sale before the entry of any appeal or the entry of any motion by any party to the cause or any bidder to reconsider the order of confirma-

tion; that company would, therefore, hold the property by a good title. (Bank *v.* Bank, 6 Pet., p. 16; Guiteau *v.* Whiteley, 47 Ills., 433; Konitz *v.* Bank, 16 Wall., p. 202; Stewart *v.* Gay, 127 U. S., p. 527.

That company is not a party to this proceeding or cause, and could hold the property, unless its title should be successfully assailed in a plenary suit for fraud. The court will not do a vain thing by interfering with the order of confirmation. (Gray *v.* Brignarbello, 1 Wall., 627; Foulke *v.* Zimmerman, 16 Wall., 113; Galpin *v.* Page, 18 Wall., 350, 373, 375; Davis *v.* Gaines, 104 U. S., 391; Gordan *v.* South Fork, 17 A. L. Reg., 279, S. C.; 2 Abbott, U. S., 479, 480; Cook *v.* Circuit Judge, 70 Mich., 94, 100; Freeman on Judgments, sec. 484, cases under V.)

We submit upon the whole record that the equities are with the appellees, and that the proceedings below should be affirmed or the appeals dismissed.

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